

*United States Court of Appeals  
for the Second Circuit*



**APPELLANT'S  
APPENDIX**



ORIGINIAL

75-1351

B  
PMS

## United States Court of Appeals

For the Second Circuit.

THE UNITED STATES OF AMERICA,

*Appellee,*

-against-

ISAIAH CRUTCH and ANNA JEAN GEORGE,

*Appellants.*

**APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

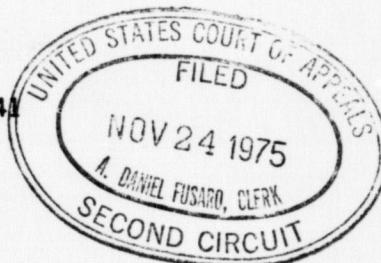
## Appellants' Appendix

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67-40 Myrtle Avenue  
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STEPHEN R. LAIFER  
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*Attorneys for Appellants*

EDWIN IRA SCHULMAN  
*Of Counsel*



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## Appendix

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CRIMINAL DOCKET  
UNITED STATES DISTRICT COURT

75 CRIM. 418

F. C. Form No. 100 Rev.

JUDGE POLLACK

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U. S.:
vs.	David A. Cutner, AUSA.
1. ISAIAH CRUTCH, a/k/a Alexander Jackson	791-1935
2. ANNA JEAN GEORGE, a/k/a Alice Holmes	
	For Defendant:

(05) STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 2 mailed	Clerk	10/3			
J.S. 3 mailed	Marshal				
Violation	Docket fee				
Title 18					
Sec. 371, 1341 & 1342					
Consp. to commit mail fraud. (Ct.1)					
Mail fraud. (Ct.2-5)					
Use of false names in connection w/mail fraud. (Cts.6-9)					
( Nine Counts)					

DATE	PROCEEDINGS
4-23-75	Filed indictment. (Related to 74 Cr992 and referred to MacMahon, J.)
5/5/75	BEFORE: POLLACK, J. -Suppression hearing bx held & concluded. Motions Denied. Pollack
5-6-75	ANNA JEAN GEORGE - Filed Notice of Appearance of Atty. Stephen R. Laifer, 16 Court Street, Brooklyn, NY Tel # HL 5-8855.
5-6-75	ISAIAH CRUTCH - Filed Pltff's Memorandum in opposition to motion to suppress.
05-27-75	CASE REASSIGNED TO JUDGE POLLACK.
7-17-75	Filed transcript of record of proceedings, dated 5-5-75. (in 74 Cr 992)
7-18-75	Filed transcript of record of proceedings, dated 5-1-75
8-14-75	Filed Affdvt. of A. Strauss for writ of habeas corpus ad testificandum for Burtis B. Hoggard. Writ issued ret. 8-18-75.

-cont. 'd. on next page-

## PROCEEDINGS

8-20-75 Trial begun with jury. Deft. Isaish Crutch present (atty. Leonard Eisenberg present) Deft. Anna Jean George present (atty. Stephen Laifer present).

08-21-75 Trial cont'd.

08-22-75 Trial cont'd. and concluded. Both defts. "GUILTY" on all 9 counts. P.S.I. ordered. Sent. 9-3-75 rm. 129. Bail fixed in the amount of \$10,000. cash or surety (effective 8-28-75 pending hearing at 9:45 in condition with bail for deft. Isaiah Crutch) Deft. Alice Jean George is R.O.R. Pollack, J.

0-03-75 Filed deft. Anna Jean George-notice of appeal from judgment of 10-3 mailed copies to U.S. Atty., deft.'s atty. Schulman & Laifer deft.

0-03-75 Filed deft. Isaiah Crutch's notice of appeal from judgment of 10-3 mailed copies to U.S. Atty., deft.'s atty. Leonard J. Eisenberg deft.

A TRUE COPY  
RAYMOND F. BURCHARD, Clerk

8/11/75  
RAYMOND F. BURCHARD, Clerk

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## Unter Mairs Dichter Gust

DGT:EJB:rap  
F. #743,162

EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

**Docket No.**

78

66-36 YELLOWSTONE BOULEVARD,  
QUEENS, NEW YORK, APARTMENT 6E

**SEARCH WARRANT**

To any Special Agents of the Federal Bureau of Investigation, and/or  
any Postal Inspector, Postal Inspection Service  
Affidavit(s) having been made before me by DALE R. HACKBART, S/A F.B.I.

that he has reason to believe that { ~~700th Street~~ on the premises known as } 66-36 YELLOWSTONE BOULEVARD,  
QUEENS, NEW YORK, APARTMENT 6E

in the Eastern District of New York

there is now being concealed certain property, namely a quantity of <sup>the describe property</sup> blank bank checks, a check writing machine, credit cards and applications for same, together with various pieces of spurious and purloined identification, all of which constitute evidence of a scheme to defraud through the use of the United States mail in violation of Title 18, United States Code, Section 1341 and the crime of possession of goods stolen from a Federally insured bank, in violation of Title 18, United States Code, Section 2113(c).

and as I am satisfied that there is probable cause to believe that the property so described is being concealed on the person or premises above described and that grounds for application for issuance of the search warrant exist as stated in the supporting affidavit(s).

You are hereby commanded to search within a period of 14 days (not to exceed 10 days) the person or place named for the property specified, serving this warrant and making the search { in the daytime (6:00 a.m. to 10:00 p.m.) } and if the property be found there to seize it, leaving a copy of this warrant and receipt for the property taken, and prepare a written inventory of the property seized and promptly return this warrant and bring the property before ----- as required by law.

**Section 1. Federal funds or expenditures**

Dated this 29th day of August 1874

Mr. Setifusay

"The Federal Rules of Criminal Procedure provide: "The warrant shall be served in the daytime, unless the issuing authority, by appropriate procedure in the warrant, and for reasonable cause, otherwise authorizes its execution at times which are not daytime." (Rule 43(c)). A statement or ground for pro-

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

----- X  
UNITED STATES OF AMERICA  
- against -

AFFIDAVIT FOR  
SEARCH WARRANT

66-36 YELLOWSTONE BOULEVARD,  
QUEENS, NEW YORK, APARTMENT 6E

Defendant.

----- X  
EASTERN DISTRICT OF NEW YORK, SS:

DALE R. HACKBART, being duly sworn, deposes and says  
that he is a Special Agent of the Federal Bureau of Investigation,  
duly appointed according to law and acting as such.

Your deponent has reason to believe that there is  
presently being concealed within the premises known and  
described as APARTMENT 6E, 66-36 YELLOWSTONE BOULEVARD,  
QUEENS, NEW YORK, within the Eastern District of New York,  
a quantity of blank bank checks, a check writing machine,  
credit cards and applications for same, together with  
various pieces of spurious and purloined identification,  
all of which constitute evidence of a scheme to defraud  
through the use of the United States mail in violation of  
Title 18, United States Code, Section 1341 and the crime  
of possession of goods stolen from a Federally insured bank  
in violation of Title 18, United States Code, §2113(c).

The source of your deponent's information and the  
grounds for his belief are:

(1) At approximately 8:40 A.M. on August 29, 1974,  
your deponent together with Agents of the Postal Inspection  
Service went to the aforementioned premises known to be  
occupied by Anna Jean Williams and Isiah Crutch for the  
purpose of executing a warrant of apprehension issued in

the Southern District of New York, which warrant alleged a violation of the mail fraud statute, Title 18, United States Code §1341 on the part of Anna Jean Williams;

(2) Upon entering Apartment 6E and placing Anna Jean Williams under arrest, your deponent and his fellow officers noticed a quantity of men's clothing together with a pair of shoes lying on the floor. To assure their safety, the Agents opened the hall closet door in an attempt to determine if Isiah Crutch was hiding in the premises at that time. Upon opening the door, in plain view the Agents observed a commercial check writing machine on a shelf in the closet. In addition, your Agents observed a quantity of blank checks bearing the name of John Schaffner and an address on East 53 Street in New York City. In addition to the aforementioned observations, the Agents observed a Sunoco Oil Credit Card in the name of one James Nobels lying in open view in the vicinity of the television set in the living room of Apartment 6E.

Your deponent has been advised by members of the Postal Inspection Service and through the results of investigations conducted by the Federal Bureau of Investigation, that the crime for which Anna Jean Williams was arrested on August 29, 1974 involved the submission of phony credit card applications to credit card companies through the use of the United States mails. In addition, investigation by these two agencies has resulted in securing positive identification of both Anna Jean Williams and Isiah Crutch as the individuals who on July 29, 1974 passed a phony certified check in the amount of approximately \$1,300 to the R.H. Macy Co., which check was filled out and certified through the use of a commercial check writing machine such as observed by the Agents in Paragraph 2 above.

Following the arrest of Anna Jean Williams on the morning of August 29, 1974, Apartment 6E was secured by your deponent and other Special Agents of the Federal Bureau of Investigation and no one has entered or left said Apartment since up to and including the time of application of this search warrant.

WHEREFORE, your deponent respectfully requests that a warrant issue to your deponent and to other Special Agents of the Federal Bureau of Investigation, authorizing him or them to enter the premises known as APARTMENT 6E, 66-36 YELLOWSTONE BOULEVARD, QUEENS, NEW YORK and there to search for and to seize a quantity of blank bank checks, a check writing machine, credit cards and applications for same, together with various pieces of spurious and purloined identification, all of which constitute evidence of a scheme to defraud through the use of the United States mail in violation of Title 18, United States Code §1341 and the crime of possession of goods stolen from a Federally insured bank in violation of Title 18, United States Code §2113(c).

Dale R. Hackbart  
DALE R. HACKBART  
S/A, F.B.I.

Sworn to before me this  
29th day of August 1974

Max Schiffman  
U. S. Magistrate  
225 Cadman Plaza East  
New York 11201  
UNITED STATES MAGISTRATE  
EASTERN DISTRICT OF NEW YORK

Max Schiffman  
U. S. Magistrate  
225 Cadman Plaza East  
Brooklyn, New York 11201  
U.S.M. E.D.N.Y.

Page 1.

1) Wage and Tax Statement for 1973

# 13-6894237 - prepared by:

DATA COMPUTER MARKETING, INC.

507, 5<sup>th</sup> Ave., New York

for:

Robert McPherson 245-67-8964

209 EAST 56<sup>th</sup> ST.

New York, N.Y.

2) Application for TWA Getaway Credit etc.

3) Blank checks #126-300 personalized  
to IAC Crutch

300 EAST 40<sup>th</sup> ST.

New York, N.Y. 10016

- drawn on Chase Manhattan Bank

580 3<sup>rd</sup> Ave, N.Y., N.Y. 10016

4) 2-Bank account information card dated  
5/7/74 - City National Bank of N.J.



- 11) - 2 applications for Bank Americard through Chase Manhattan, New Hyde Park, N.Y. 11040
- 12) - application for credit card from Saks Fifth Ave.
- 13) - form for requester for Blood Grouping with address on back
- 14) - Paper with T.K. & Enterprise written on it
- 15) - Credit card application for Bloomingdale's
- 16) - Certified Check # 312 drawn on Chemical Bank, 1023 Fifth Ave., New York, N.Y. payable to Keller Carpets in the amt. of \$1,749.49 dated 8/13/74 drawn on account of Thomas I. Lewis, 330 East 56th St., New York, N.Y.

- 17) Bill from Fortunoff's dated 7/26  
in amount of 213.95
- 18) Master Charge Credit Card # 5218-  
0086-280-559 expires 3/75  
in name of Robert McPHERSON
- 19) blank check in name of John Schaffner  
on Manufacturers Hanover Trust  
Co., 866, 3rd Ave, New York, N.Y.
- 20) Letter dated 3/28/74 from New York  
City Employee's Retirement System  
to Mrs. Anna Jean George
- 21) blank check #.184 in name of Alexander  
D. Jackson, 245 East 30<sup>th</sup> St., New  
York, N.Y. 10016 on The Amalgamated  
Bank of New York, 1710 Broadway,  
New York, N.Y.
- 22) New York Telephone, customer's receipt  
# C-1-6287 8

- 23) U.S. Postal Money Order receipts numbers 16491808168 for 5.00 and 16491808124 for 150.00
- 24) sales receipt for 469.73 (from) Macy's Dept Store dated 3/5/74
- 25) sales receipt for 588.45 (from) Macy's Dept Store dated 3/5/74
- 26) 4 sheets of writing paper with Data Computer Profile Inc., letterhead
- 27) Sales receipt from Willoughby's 110 West 32nd St., N.Y.C., Adm \$11153.41 dated 5/1/74
- 28) application for American Express Company credit card.
- 29) Bank Americard Application complete in the name of, JOANN LEMIND

Page 6

30) credit card application # 82388  
from Wallocks

31) Letter to H. Stern from Sir Charles  
General II, T.J. F. Enterprises,  
dated 7/22/74 and reply letter  
from H. Stern dated 7/29/74.

32) 2 Blank checks in white envelope  
personalized to John Schaffner,  
312 East 53rd St., New York, N.Y.  
drawn on Manufacturers Hanover Trust.  
(Envelope has signatures of John S.  
Schaffner and Bloomingdales Acct.  
# 116-31-182-51

33) Blank check - certified # 115687 in  
amount of \$1,644 and 90 cents in  
name of Marcia Roberts, 41-42 Park  
Blvd., Springfield Gardens, N.Y. 11412  
dated 8/5/74 - drawn on Chemical  
Bank, 100 Park Ave, New York, N.Y.

34) Manufacturers Hanover Trust cancelled  
check storage cabinet containing  
blank checks, cancelled checks and  
bank statements

35) Blank payroll  
check # PR 1344 in name  
of Card Processing Inc., 147 41<sup>st</sup>  
Brooklyn, N.Y. 11232 drawn on  
First Nat'l City Bank, 640 5<sup>th</sup> Ave, N.Y.C.

36) Certificate of Registration for personal  
effects taken abroad 6/21/74

37) Profiles in names of:  
a) Alice Holmes  
b) Jacqueline Boyce  
c) Ralph Leinwand  
d) Lucille Bowman  
e) Diane McDonald  
f) Madeline Leinwand

- 38) Paper with name IRA Miller  
and Mrs. Alice Palmer
- 39) Two invoices dated 2/28/74 from  
A Cleaning Machine Service Co., 59 West  
30th St., New York, N.Y. 10001
- 40) TWA refund application dated 6/17/  
payable to T.J.F. Advertising Agency
- 41) Greenwich Savings Bank deposit  
Book 280831-8
- 42) TWA Credit Card Application blank
- 43) Hefty Credit Card Application
- 44) TWA Refund Check # R 57549  
payable to T.J.F. Advertising Agency  
in amount of \$46.00
- 45) Response bill, 316 Fiftieth Ave. in amount  
of \$6.00

46) Letter to Mr. Charles Bernard  
postmarked 8/12/74 New York, N.Y.

47) Blank check in name of John Schaffner  
in amount of \$1,374.00

48) Blank check name of John Schaffner  
no amount

49) American Airlines to blank  
ticket 001-4091-352-464

50) Gimbel's Credit Card # 17-461-138  
in name of Mrs. Anna George

51) Kornettes credit card # 0307-055-21  
in name of Bernard George

52) Gimbel's credit card # 17-461-138  
Mrs. Anna George

53) Macy's Credit Card # CT 569-40-69  
in name of Mrs. Bernard George

54) OHRBACH'S Credit Card # 54-36-761-  
in name of Bernard George

55) United Air Lines Travel Card #  
UC 3-800-810-6 expire 4/75  
in name of Bernard George

56) 8 Assorted Sale Slips in name  
of Bernard George or George Bernard

57) Master Charge Credit Card # 5217-  
3304-204-295 in name  
of Linda Fox expire 4/75

58) Hertz Credit Card # 5229698 in  
name of Diane McDonald

59) State of New Jersey Driver's license #  
K0303-19273-01156 in name of  
Diane McDonald and K0303-19274-  
01178 in name of Linda Ann Fox

60) assorted credit card applications  
15

61) Index Cards with names  
and account numbers

62) Security Pacific National Bank  
acct # 037-754, Wilshire  
and Highland Bn. #142 in  
name of Donald J. Sullivan

63) Community College Receipt

64) First class letter to Alexander  
Jackson 245 E. 30th St., New  
York, N.Y. postmarked 4/26/74

65) Blank Checks drawn on account  
24-010-51 at Bankers Trust  
77-01 31st Ave, Jackson Heights,  
N.Y. 11370 - total 10 checks

66) East Fifteen Assn. membership ex.  
in name of John Schaffer  
expired 9/30/74

Page 12

67) TWA bill in amount of 41.32  
on acct 151-170-956-8-000

68) Blank checks # 527-550 in  
name of Anna Jean George  
drawn on Bankers Trust Co.  
77-01 31st Ave, Jackson Heights,  
N.Y. 11370

69) Box of Checks in name of  
Bernard George drawn on Bankers  
Trust Co.

70) Box of Checks in name of Isaac  
Crutch, Jr. drawn up on  
Banco De Orlce, New York,  
N.Y.

71) 1-Boarsnags Chick Protector  
T 8009 Serial # P66 39 with amount 13  
72) White Ray bearing tag for Furniture Blanket 45-63-  
732,59  
This is to certify that on August 29, 1974  
at 12:45 pm Special Agents of the FBI and  
MS Postal Inspectors at the time of conducting  
a search of the premises at 66-36 Yellowstone

Boulevard, Apartment 6E, Queens New York  
obtained the above listed items consisting  
of 12 pages of items. I further certify  
that the above represents all the items  
obtained by Special Agents of the FBI and  
U.S. Postal Service.

8/28/74.

~~John P. Miller~~

Witnessed  
Howard V. Gieck  
Dale R. Nachbaur  
Supt FBI  
W. M. Meyers  
Postal Inspector  
John S. Ellis Jr.  
Postal Inspector

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

- v -

INDICTMENT

ISAIAH CRUTCH,  
a/k/a Alexander Jackson, and

3 75 Cr. 418

ANNA JEAN GEORGE,  
a/k/a Alice Holmes.

Defendants.

The Grand Jury charges:

1. From on or about the 1st day of January, 1973, and continuously thereafter up to and including the date of the filing of this Indictment, ISAIAH CRUTCH, a/k/a Alexander Jackson, and ANNA JEAN GEORGE, a/k/a Alice Holmes, the defendants, and others to the Grand Jury known and unknown, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other to violate Sections 1341 and 1342 of Title 18, United States Code.

2. It was a part of said conspiracy that said defendants, having devised and intending to devise a scheme and artifice to defraud and to obtain money and property by means of false and fraudulent pretenses, and attempting to do so, would place and cause to be placed in post offices and authorized depositories for mail matter, certain matter to be sent and delivered by the Postal Service.

3. It was further a part of said conspiracy that said defendants, for the purpose of conducting, promoting, and carrying on by means of the Postal Service, the scheme and artifice as aforesaid, would use and assume, and request

to be addressed by, fictitious, false, and assumed names other than their own proper names, and would take and receive from post offices and authorized depositories for mail matter, mail matter addressed to such fictitious, false and assumed names.

4. Among the means by which the defendants would and did carry out the conspiracy were the following:

(a) Said defendants would and did file charge account and credit card applications, using false names and providing false and fraudulent employment information.

(b) Said defendants would and did control and operate "business" concerns, the actual purpose and function of which was solely to verify the false and fraudulent employment information contained on said applications, for merchants, credit card companies, and banks, and which "business" concerns did, in fact, verify the false and fraudulent information as aforesaid.

(c) Said defendants would and did obtain charge accounts and credit cards under the false pretenses and representations as aforesaid.

(d) Said defendants would and did obtain goods, services, money, and other property with the said charge accounts and credit cards.

(e) Said defendants would not and did not pay for said goods, services, money, and other property.

#### OVERT ACTS

In furtherance of the said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York:

1. On or about the 25th day of February, 1974, ISAIAH CRUTCH mailed a Master Charge credit card application to,

and obtained by mail a Master Charge credit card from, First National City Bank, using the name Alexander Jackson, and listing as his employer "Data Computer Marketing Profile."

2. On or about the 30th day of May, 1974, ISAIAH CRUTCH attempted to make a purchase at Gimbel's with a Gimbel's credit card issued to Shaw C. Roberts.

3. On or about the 27th day of January, 1974, ANNA JEAN GEORGE mailed a credit card application to, and obtained by mail a credit card from, Gimbel's, using the name Alice Holmes, and listing as her employer "Data Computer Profile."

(Title 18, United States Code, Section 371.)

GOING TO GRAND JURY FIVE  
The Grand Jury further charges:

**ONLY COPY AVAILABLE**

1. From on or about the 1st day of January, 1973, up to and including the date of the filing of this Indictment, in the Southern District of New York, ISAIAH CRUTCH, a/k/a Alexander Jackson, and ANNA JEAN GEORGE, a/k/a Alice Holmes, the defendants, unlawfully, wilfully and knowingly did devise, and intend to devise, a scheme and artifice to defraud merchants, credit card companies, and banks as hereinafter set forth, and to obtain money and property by means of false and fraudulent pretenses and representations.

2. It was a part of said scheme and artifice to defraud that said defendants would and did file charge account and credit card applications, and obtain charge accounts and credit cards, using false names and providing false and fraudulent employment information.

3. On or about the dates hereinafter set forth, in the Southern District of New York, ISATAH CRUTCH, a/k/a Alexander Jackson and ANNA JEAN GEORGE, a/k/a Alice Holmes, the defendants, unlawfully, ~~willfully~~ and knowingly, and for the purpose of executing and attempting to execute said scheme and artifice to defraud, did take and receive from the Postal Service, and knowingly cause to be delivered by mail according to the direction thereon, mail matter sent and delivered by the Postal Service, to wit:

<u>COUNT</u>	<u>DATE</u>	<u>MAIL MATTER</u>
2	4/24/74	Saks Fifth Avenue credit card
3	5/3/74	Diners Club credit card
4	3/1/74	Macy's credit card
5	4/4/74	American Express credit card

(Title 18, United States Code, Sections 1341 and 2.)

COUNTS SIX THROUGH NINE

The Grand Jury further charges:

On or about the dates hereinafter set forth, in the Southern District of New York, ISATAH CRUTCH, a/k/a Alexander Jackson, and ANNA JEAN GEORGE, a/k/a Alice Holmes, the defendants, unlawfully, wilfully and knowingly, and for the purpose of conducting, promoting, and carrying on by means of the Postal Service the aforesaid scheme and artifice to defraud referred to in Counts Two through Five, did use and assume, and request to be addressed by, fictitious, false and assumed names and names other than their own proper names,

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DC:jpr  
a-203

as hereinafter set forth, and did take and receive from the  
Postal Service mail matter addressed to such fictitious, false,  
and assumed names, to wit:

<u>COUNT</u>	<u>ASSUMED NAME</u>	<u>MAIL MATTER</u>
6	Alexander Jackson	Item set forth in Count 2
7	Alexander Jackson	Item set forth in Count 3
8	Alexander Jackson	Item set forth in Count 4
9	Alice Holmes	Item set forth in Count 5

(Title 18, United States Code, Sections 1342 and 2.)

POPEFAR

PAUL J. CURRAN  
United States Attorney

1 UNITED STATES DISTRICT COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 ----- x  
4 UNITED STATES OF AMERICA :  
5 Plaintiff :  
6 v.  
7 GLENSTON PAGE LAWS, a/k/a Leonard :  
8 W. Fox, a/k/a Shawin C. Roberts, :  
9 a/k/a Dean Richardson, a/k/a :  
10 Thomas Bond, : 74 Cr. 992  
11 Defendant. : 75 Cr. 417  
12 ----- x 75 Cr. 418  
13 UNITED STATES OF AMERICA :  
14 Plaintiff :  
15 v.  
16 ISAIAH CRUTCH, a/k/a Alexander :  
17 Jackson, :  
18 Defendant. :  
19 ----- x  
20 UNITED STATES OF AMERICA :  
21 Plaintiff :  
22 v.  
23 ANNA JEAN GEORGE, a/k/a Alice :  
24 Holmes, :  
25 Defendant. :  
26 ----- x  
27 May 5, 1975,  
28 11 A.M.

18 Before:

19 Hon. Milton Pollack,  
District Judge.

20 Appearances:

21 PAUL J. CURRAN, U.S. Attorney  
22 For the Government,  
23 David A. Cutner, Assistant U.S. Attorney.

24 BARRY KRINSKY, ESQ.,  
25 Attorney for Glenston Page Laws.

LEONARD EISENBERG, ESQ.,  
25 Attorney for Isaiah Crutch.

1 eb:mg 19

2 without the necessity of anything else in the course of  
3 this proceeding.

4 The motion to suppress based upon the identifi-  
5 cation is denied as to all parties.

6 Let's proceed with the other motion.

7 Are you ready to go ahead with the supposed il-  
8 legal search?

9 MR. EISENBERG: Yes, your Honor.

10 THE COURT: There is a warrant here.

11 Doesn't that mean that the defendants go forward  
12 first?

13 Is there any question about the validity of the  
14 warrant itself? Or is that conceded for purposes of this  
15 motion to be legally obtained and properly outlined?

16 MR. EISENBERG: The warrant itself, Judge, as  
17 far as the accuracy and the --

18 THE COURT: Probable cause.

19 MR. EISENBERG: No, I do not stipulate to the  
20 probable cause, Judge.

21 THE COURT: All right, then proceed.

22 MR. EISENBERG: I will call Special Agent Dale  
23 Hackbart of the FBI.

24 MR. CUTNER: Your Honor, I'm going to object to  
25 Mr. Eisenberg calling Mr. Hackbart at this time. I don't

1 eb:mg 20

85

2 see any showing here that Mr. Crutch has standing to object  
3 to the items seized in this search and unless Mr. Eisenberg  
4 expects to prove that through Mr. Hackbart I don't think  
5 that he would be a proper witness at this time.

6 THE COURT: That may be but I will take it subject  
7 to a motion to strike it out so that we have the complete  
8 record.

9 It seems highly unlikely that he has standing  
10 to object but we will take it all and decide all of the  
11 questions at one time.

12 Do you claim, Mr. Eisenberg, that Mr. Crutch has  
13 any interest in this apartment?

14 MR. EISENBERG: Yes.

15 THE COURT: What interest has he got?

16 MR. EISENBERG: He resided there.

17 THE COURT: Off and on.

18 MR. EISENBERG: Right. He so states in the af-  
19 fidavit, Judge.

20 MR. CUTNER: I haven't seen any affidavit.

21 MR. EISENBERG: Your own affidavit for a search  
22 warrant.

23 THE COURT: Swear the witness.

24  
25 25

1 eb:mg 21

Hackbart-direct

2 D A L E H A C K B A R T, called as a witness

3 by Defendant Crutch, being first duly sworn, testified  
4 as follows:

## 5 DIRECT EXAMINATION

6 BY MR. EISENBERG:

7 Q Mr. Hackbart, you are an agent of the FBI?

8 A Yes, sir.

9 Q And back on August 29, 1964, do you recall being  
10 at Apartment No. 6E located at 66-36 Yellowstone Boulevard  
11 in the county of Queens?

12 A Yes, sir.

13 Q That is within the United States District Court  
14 for the Eastern District of New York, is that correct?

15 A Yes, sir.

16 Q What time did you first arrive at that apartment?

17 A Approximately a quarter to nine in the morning.

18 Q Were you alone when you arrived at that apart-  
19 ment?

20 A No, sir, I was not.

21 Q Who were you with, if anyone?

22 A Postal Inspector Christine Marco and Postal  
23 Inspector Wayne Meyers.

24 Q For what purpose were you there?

25 A To arrest Anna Jean George.

2 Q You had a warrant for her arrest?

3 A Yes.

4 Q Based upon a magistrate's information or complaint?

5 A Yes.

6 Q Had you previously called the apartment by  
7 telephone?

8 A Not to my knowledge. I did not.

9 Q Do you know whether or not Ms. Marco or Mr. Meyers  
10 did?

11 A That I don't know.

12 Q Nevertheless, there came a time when you came to  
13 the front door of the apartment and you knocked on the  
14 apartment door, is that correct?

15 A Yes, sir.

16 Q Did you knock or did Mr. Meyers knock?

17 A Mr. Meyers.

18 Q Was there a reply from the inside?

19 A No. When we knocked, we didn't hear a reply.

20 Q Somebody eventually opened the door, right?

21 A Yes.

22 Q Was not that person Ms. George?

23 A Yes, sir, it was.

24 Q Is this her right in the courtroom here?

25 A Yes, sir.

1 eb:mg 23

Hackbart-direct

2 MR. EISENBERG: Indicating the defendant George,  
3 your Honor.

4 Q Now, what was the first thing that anybody said  
5 when Ms. George opened the apartment door?

6 A I believe Mr. Meyers identified himself as a  
7 Postal Inspector. He identified Ms. Marco as a Postal In-  
8 spector and myself as an FBI agent, and mentioned to her  
9 that we had a warrant for her arrest.

10 Q And what happened then?

11 A She let us in. She was somewhat nervous when we  
12 went in, and at this point we explained to her that we had  
13 a warrant for her arrest on a charge of mail fraud, and at  
14 this point, Inspector Marco advised her of her rights.

15 She had apparently just gotten up, we had awakened  
16 her. We then asked if she would get dressed and come with  
17 us.

18 Q Is that when Ms. Marco took her to get dressed?

19 A Before Ms. Marco took her to get dressed, we went  
20 in and made a search of the bathroom and the bedroom to make  
21 sure that nobody else was in those particular rooms at that  
22 time.

23 Q And the living room, too, right?

24 A No, sir, not at that time. We just searched the  
25 bedroom and the bathroom because this was where Ms. George

1 eb:mg 24 Hackbart-direct

2 was going to get dressed.

3 Q How about the rest of the apartment? Did anybody  
4 search that?

5           A       After Ms. George and Ms. Marco went into the bed-  
6           room, we then, Postal Inspector Meyers and I went into the  
7           living room and we saw a pair of shoes on the floor --  
8           Postal Inspector Meyers went to search the front area of  
9           the living room, I went back and I searched the closet along  
10          the wall as you come in, just to make sure that no one else  
11          was in the apartment.

12 Q So, in effect, before leaving the apartment, after  
13 placing Ms. George under arrest, you searched the entire  
14 apartment?

15 A Just to make sure no one else was in the  
16 apartment.

17 Q For whatever reason, the entire apartment was  
18 searched, right?

19 A Yes, sir.

20      Q      All the rooms and all the closets?

21 A Yes, sir.

22 Q And it was in one of these closets that you found  
23 a check-writing machine, correct?

24           A     Yes, sir. When I opened the door, a blank check  
25           fell off the shelf. At that point I saw a checkwriter up

1 eb:mg 25

2 Hackbart-direct

3 there.

4 Q In other words, first you opened the door, you  
5 took out the checkwriting machine and after that a check  
6 came falling down?7 A No, sir. I opened the door and in my opening  
8 it --

9 Q It is a walk-in closet?

10 A Yes, and apparently in pulling the door open, the  
11 suction sucked the check off the top shelf and it fluttered  
12 to the floor and I picked it up. At that point Postal  
13 Inspector Meyers saw a credit card on a television set.14 Q You say at that point Postal Inspector Meyers  
15 saw a credit card on the television set?16 A Well, in walking through the apartment we saw  
17 a credit card on the television set in addition to the check-  
book.

18 Q The television set is in the living room, right?

19 A Right.

20 Q And correct me if I'm wrong, please, but that  
21 is roughly approximately 30 feet or more from the front  
22 door?23 A About from here to the back wall, however far that  
24 is.

25 MR. EISENBERG: Does your Honor have any markings

2 on a board that would indicate how far it is from the  
3 witness stand to the back wall?

4 A It is at least 30 feet.

5 Q In other words, first you had to go through the  
6 entry foyer, down a corridor into an area that was a dining  
7 area, let's say, and then into the living room?

8 A You walked in, the closets were on the right, at  
9 least it opens then into the living room.

10 Q You have got closets on the right-hand side about  
11 12 feet in length?

12 A Something like that.

13 Q Then there is a corridor that goes to the right,  
14 at least to the bedroom?

15 A To the bedroom and the bathroom.

16 Q And beyond that corridor you have an L-shaped  
17 room containing the living room and the dining room?

18 A Yes.

19 Q And the television set was off in the far corner  
20 against a wall?

21 A Yes, about three-quarters of the way, yes.

22 Q Had you ever been to the apartment before?

23 A No, sir.

24 Q Had the apartment ever been put under surveil-  
25 lance?

1 eb:mg 27

Hackbart-direct

2 A No, sir.

3 MR. EISNBERG: Will your Honor bear with me for  
4 one moment, please?

5 THE COURT: Yes.

6 Q Do you recall at one point if Ms. George came out  
7 of the bathroom, I believe, while you were searching in  
8 the closets and asked you whether or not you had a search  
9 warrant?

10 A No, sir, I don't recall that.

11 Q Was it possible that she may have said that to  
12 you?

13 A I don't recall.

14 Q Did you have any conversation with her in the  
15 apartment relative to your searching the apartment after  
16 you placed her under arrest?

17 A I honestly don't recall.

18 Q Do you recall whether or not Ms. Marco or Mr.  
19 Meyers may have had such a conversation with her?20 A No, that I don't know. Inspector Meyers was with  
21 me and Ms. Marco took Ms. George into the back bedroom and  
22 the bathroom to get dressed. I don't know what they dis-  
23 cussed back there.24 Q What I am just referring to is whether or not  
25 she may have spoken to them while you were present?

2 A I don't know.

3 Q It is possible, though?

4 A I don't know.

5 Q You don't recall?

6 A I don't recall.

7 Q Did you find anybody else in the apartment?

8 A No, sir.

9 Q Incidentally, where exactly did you look in the  
10 apartment for anybody else?

11 A I looked in the bathroom, the bedroom, there was  
12 a walk-in closet in the bedroom. I looked in there, and I  
13 think there was a closet door between the kitchen and the  
14 bathroom. There was a door there. We opened that door and  
15 there was a linen-type closet and then I looked in the  
16 full length wall closets.

17 Q Did you look under the bed in the bedroom?

18 A Yes, sir, we did.

19 Q Did you look in any of the dresser drawers in the  
20 bedroom?

21 A No, sir.

22 Q Did you look in any of the cabinets or the drawers  
23 in the kitchen?

24 A No, sir.

25 Q Did you look in the broom closet?

1 eb:mg 29

Hackbart-direct

2 A I don't recall a broom closet there.

3 Q You found no one else in the apartment?

4 A No, sir.

5 Q Who left with Ms. George?

6 A Who left with Ms. George?

7 Q Yes. She was in custody, right?

8 A Right.

9 Q And who left with her?

10 A The three of us did.

11 Q All three of you did?

12 A All three of us did.

13 Q Was there anybody left in the apartment when you  
14 left?

15 A Yes, sir.

16 Q There were two agents, right?

17 A Two Postal Inspectors.

18 Q You had previously called them to come and sit in  
19 the apartment while you went to make application for a  
20 search warrant, correct?

21 A Yes.

22 Q Approximately how long had you been in the apart-  
23 ment from the time you first went in to arrest Ms. George  
24 until the time that the three of you -- yourself, Ms. Marco,  
25 Mr. Meyers -- left with Ms. George?

1 eb:mg 30

Hackbart-direct

2 A Probably a couple of hours.

3 Q A couple of hours, right?

4 A Right.

5 Q Tell me, did you have your weapon out at any time?

6 A No, sir.

7 Q While you were looking for somebody potentially  
8 who was hiding in the apartment who could prove dangerous  
9 to your life, right?

10 A Yes, sir.

11 Q And you opened closed closet doors, right?

12 A Yes, sir.

13 Q But you didn't have your weapon out?

14 A No, sir.

15 Q Officer, from the moment that you came into the  
16 apartment, Ms. George was always in the presence of one of  
17 the three of you, isn't that correct? You, Ms. Marco, or  
18 Mr. Meyers?

19 A Yes, sir.

20 Q And she was dressed in a pair of pajamas?

21 A I don't recall exactly. Yes, that type of thing,  
22 yes.

23 Q Night clothes?

24 A Right.

25 Q And she wasn't carrying any weapon, or nothing was

1 eb:mg 31 Hackbart-direct /cross

2 visible, correct?

3 A No, sir.

4 Q And she was taken by Ms. Marco directly to the  
5 bathroom to get dressed so she could be brought to Magis-  
6 trate's Court, correct?

7 A Yes.

8 Q And Ms. Marco was always in her presence from  
9 the minute she was placed under arrest until the time she  
10 left the apartment?

11 A Yes, sir.

12 MR. EISENBERG: I have no other questions at  
13 this time, Judge.

14 THE COURT: Any cross-examination?

15 MR. CUTNER: Yes, sir.

16 CROSS-EXAMINATION

17 BY MR. CUTNER:

18 Q Agent Hackbart, on the morning of August 29, 1974,  
19 you went to--

20 MR. EISENBERG: Maybe Mr. Shulman wants to ex-  
21 amine.

22 Excuse me, Judge, does your Honor wish co-counsel  
23 to proceed first or Mr. Cutner to proceed first?

24 THE COURT: Do you have any questions, Mr. Shulman?

25 MR. SHULMAN: Yes, your Honor.

1 eb:mg 32

Hackbart-cross

2 THE COURT: Go ahead.

## 3 CROSS-EXAMINATION

4 BY MR. SHULMAN:

5 Q Now, you entered the apartment with how many  
6 persons?

7 A Two other persons-- three including myself.

8 Q And how many arrived after that?

9 A Yes.

10 Q How many?

11 A Two.

12 Q In other words, there were five while she was  
13 under arrest?14 A There were five there altogether, six including  
15 Mr. Eisenberg.16 Q And that is before you obtained the search war-  
17 rant, is that correct?18 A No, sir. I had verbal authorization from the  
19 United States Attorney in the Eastern District of New York.

20 Q To search?

21 A He authorized -- I talked to him on the phone  
22 prior to our going down, prior to our removing Ms. Williams  
23 from the apartment. He said "Secure the place and we will  
24 give you a search warrant."

25 Q When you searched the premises, you did not obtain

1 eb:mg 33

Hackbart-cross

2 a search warrant from a judge or magistrate, did you?

3 A When I searched the place?

4 Q Yes.

5 A When I searched for an individual, no, sir, I did  
6 not have a search warrant.

7 Q Now, Officer, how many closets were in the apart-  
8 ment?

9 A Are you counting the one on the right as you walk  
10 in?

11 Q All of them.

12 A Two plus a linen closet. Three plus a linen  
13 closet.

14 Q How many rooms are in the apartment?

15 A Three plus the kitchen.

16 Q You testified previously that you remained in  
17 the apartment searching for approximately two hours, is  
18 that correct?

19 A No, sir, I did not. I said we were in the apart-  
20 ment for two hours before we took Ms. Williams away.

21 Q And how long did you search the apartment while  
22 you were there?

23 A About ten minutes.

24 Q And was the machine that was in the closet in open  
25 view?

1 eb:mq 34 hackbart-cross

2 A Yes, sir, it was.

4           A     Once I opened the closet door to check if anyone  
5                    was in there, the machine was on the top shelf.

6 Q Bit when you went to the closet, could you see  
7 anything before you opened the door?

8 A No, sir.

9      Q      Did you hear any noises in the house?

10 A I really wasn't listening for noises, sir.

11 Q You didn't know that anyone was in the house  
12 other than Ms. George, is that correct?

13 A Yes, sir. That is why I searched.

Q. And there wasn't anyone else there, correct?

15 A At the time we arrested Ms. George, no, sir, there  
16 was no one else there.

17 Q Did you search the refrigerator?

18 A No. sir.

19 Q Do you know whether the other four that were in  
20 the apartment searched the refrigerator?

21 • A The other four?

22 Q Yes, that were with you?

23 A No, sir, they did not.

24 Q Did anyone ever go in the kitchen?

25 A There was a walk-through kitchen, yes, sir. We

2 walked through the kitchen.

3 Q Who walked in the kitchen?

4 A I did.

5 Q Anyone else?

6 A Probably Inspector Meyers.

7 Q Do you know--

8 A I don't know.

9 Q Who gave her her rights?

10 A Ms. Marco.

11 Q Did she ask for her attorney?

12 A We gave her her rights orally. She asked for  
13 her attorney.

14 Q And did you call her attorney or give her the  
15 right to call her attorney?

16 A Yes, sir, we did.

17 Q You allowed her to go to the telephone?

18 A After she got dressed, yes, sir.

19 Q In her apartment?

20 A In her apartment.

21 Q Did you ever see Ms. George and/or touch any  
22 of the cards in the apartment?

23 A Will you repeat that, please?

24 Q Put it this way: Did you ever see Ms. George handle  
25 or touch any of the contraband in the apartment?

1 eb:mg 36

Hackbart-cross

2 A No, sir.

3 Q Do you know who lived in that apartment?

4 A (No response)

5 Q Other than Ms. George?

6 A No, sir.

7 Q Was there men's clothing in the apartment?

8 A Yes, sir.

9 MR. SHULMAN: No further questions.

## 10 CROSS-EXAMINATION

11 BY MR. CUTNER:

12 Q Agent Hackbart, on the morning you went to execute  
13 the search warrant for Ms. George, you also had a grand  
14 jury subpoena for the defendant Isaiah Crutch, did you  
15 not?

16 A Yes, sir, we did.

17 Q And you knew that Ms. George and Mr. Crutch had  
18 been identified by a clerk at Macy's as two people who had  
19 passed a forged and fraudulent check, isn't that true?

20 A Yes, sir, we did.

21 Q And when you went in the apartment, you saw  
22 some men's clothes strewn on the floor in the living room?

23 A Yes, sir.

24 Q Now, in response to your questions, to the ques-  
25 tions from Mr. Eisenberg and Mr. Shulman, you said you

1 eb:mg 37

Hackbart-cross

2 conducted a search of the bedroom and the bathroom.

3 NOW I take it that the search was for the limited  
4 purpose of determining whether there was any other person  
5 in the apartment, in the bedroom and the bathroom?

6 MR. EISENBERG: Objection, your Honor.

7 THE COURT: Sustained.

8 What was the purpose of the search of the bath-  
9 room and the bedroom?10 THE WITNESS: To see if anyone else was in the  
11 apartment.

12 THE COURT: Was that the sole purpose?

13 THE WITNESS: Yes, sir, it was.

14 Q Did you look in any drawers or cabinets, or any  
15 place of that sort?

16 A No, sir, I did not.

17 Q Later on in the living room and the other rooms  
18 did you look through any drawers or any papers, or things  
19 of that sort?20 A At what point? Prior to obtaining the search  
21 warfant?

22 Q Yes.

23 A No, sir, the only thing I did was open the closet.

24 Q When you opened the closet you say a check  
25 fluttered out?

1 eb:mg 38

2 Blackbart-cross

3 A Yes, sir.

4 Q And you also say you observed a checkwriter?

5 A Yes, sir.

6 Q I show you Government Exhibit 36 for identifica-  
7 tion and I ask you if this is the checkwriter you saw in  
the closet?

8 A Yes, sir, it is.

9 Q Where was the checkwriter when you opened the  
10 closet door?

11 A It was on the top shelf of the closet.

12 Q And were there any other items exposed to your  
13 view on the shelf when you opened the closet door?14 A It was a closet full of things. I mean, I don't  
15 know what specific items you are mentioning.16 Q You also saw some checks in the name of John  
17 Shaffner, isn't that true?18 A At the time-- when I first opened the closet door,  
19 I didn't see any other checks other than the check that had  
20 fallen to the floor and the checkwriter. Those were the  
21 only items I saw in the closet.22 Q And you also saw a credit card or Inspector Meyers  
23 found a credit card in the name of James Nobles --

24 MR. EISENBERG: Objection.

25 THE COURT: Sustained.

1 eb:mg 39

Hackbart-redirect

2 MR. CUTNER: I have nothing further.

3 REDIRECT EXAMINATION

4 BY MR. EISENBERG:

5 Q Just a few more questions.

6 Agent Hackbart, with respect to the check that we  
7 are talking about on cross-examination relating to Macy's --

8 A Yes, sir.

9 Q -- you stated on cross-examination that you had  
10 positive identification, that a certified check in the  
11 amount of \$1300 was given to the R. H. Macy Company by both  
12 Anna Jean Williams, who is also Anna Jean George, and  
13 Mr. Crutch.

14 A Yes, sir, they were identified.

15 Q Now, would you tell me a little bit about that?  
16 How did the identification take place and did somebody  
17 identify them to you personally?18 A Yes, sir, they did. Inspector Meyers and I went  
19 to Macy's Clearing Center out in -- it is around Roosevelt  
20 Field in Long Island. He took the check as well as a  
21 photographic spread of both Mr. Crutch and Ms. Williams and  
22 showed it to sales personnel at that location and they  
23 identified Mr. Crutch and Ms. Williams as being the individ-  
24 uals who gave them that check.

25 Q Do you know if they were ever arrested or prosecuted

2 for that charge?

3 A No, sir, I don't.

4 Q But the Government didn't prosecute on that charge,  
5 did they?

6 A No, sir.

7 Q Do you know what day this was?

8 A When we identified them?

9 Q Yes, the day that you went out to Macy's Clearance  
10 Center.

11 A The middle of August some time of 1974. I don't  
12 remember exactly.

13 Q Do you know who you saw out there?

14 A Not offhand. I have it in my files.

15 Q Would you happen to have anything with you that  
16 would refresh your recollection?

17 A Not with me, no, sir.

18 Q You were with Mr. Meyers, though, is that cor-  
19 rect?

20 A Yes, sir.

21 Q And this check that you had in your possession  
22 when you went out to the Clearance Center, was that in the  
23 name of John Shaffner?

24 A No, sir, it was not.

25 Q Was that in the name of James Nobles?

1 eb:mg 41

Hackbart-redirect  
Meyers-direct

2 A No, sir.

3 MR. EISENBERG: No other questions, your Honor.

4 THE COURT: Thank you.

5 You may step down.

6 (Witness excused)

7 THE COURT: Anything else?

8 MR. EISENBERG: May I just have a moment, Judge?

9 THE COURT: Yes.

10 (Pause)

11 MR. EISENBERG: I will call Inspector Meyers,  
12 Judge.13 W A Y N E M E Y E R S, called as a witness by  
14 Defendant Crutch, being first duly sworn, testified  
15 as follows:

16 DIRECT EXAMINATION •

17 BY MR. EISENBERG:

18 Q Mr. Meyers, you are employed as a Postal Inspector  
19 for the United States Postal Service?

20 A Yes, I am.

21 Q Do you recall the date in question, namely, Aug-  
22 ust 29, 1974, at Apartment 6E, located at 66-36 Yellowstone  
23 Boulevard in the County of Queens?

24 A Yes, I do.

25 Q Did you arrive at that apartment some time that

1 eb:mg

Meyers-direct

2 morning?

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3 A Yes.

4 Q Who were you there with?

5 A I was accompanied by Christine Marco, a Postal  
6 Inspector, and Dale Hackbart from the FBI.

7 Q Approximately what time did you arrive at the  
8 apartment?

9 A It would have been some time probably between  
10 8:30 and 9:00 o'clock.

11 Q Approximately quarter to nine, does that refresh  
12 your recollection?

13 A Somewhere in that vicinity.

14 Q You were there to arrest a Ms. Anna Jean George  
15 on a warrant from the Southern District Magistrate's Court  
16 on a complaint, is that correct?

17 A Yes, sir.

18 Q And do you recall who knocked at the door?

19 A I believe Inspector Marco did.

20 Q Inspector Marco?

21 A Right.

22 Q Eventually somebody answered the door, correct?

23 A Yes.

24 Q Was that Ms. George over here?

25 A Yes.

47

1 eb:mg 43.

Meyers-direct

2 Q Is that her?

3 A Yes.

4 Q She opened the door?

5 A Yes, sir.

6 Q And what happened right after that?

7 A We then identified ourselves and told Ms. George  
8 that we had a warrant for her arrest, and--9 Q When you say "we," I would appreciate it if you  
10 would be specific as to who said what, if you recall.11 A To my best recollection, I identified myself and  
12 I identified the two people who were with me, and we told  
13 her that we had a warrant for her arrest and that she would  
14 have to accompany us over to the magistrate's office for  
15 arraignment.

16 Q And what happened after that?

17 A Well, when she answered the door, she was dressed  
18 in a nightgown, and we went into the hallway, just inside  
19 the door, and Ms. George became-- started crying, sort of  
20 hysterical, and kind of acted like she was faint, and we  
21 tried to calm her down and to keep her from crying, and I  
22 believe Inspector Marco advised her of her rights at that  
23 time and we were still trying to calm her down, and we went  
24 on into the apartment and Chris was going to take her into  
25 the restroom.

1 eb:mg 44

Meyers-direct

2 Q You mean Christine Marco?

3 A Right.

4 Q She is your partner, right?

5 A Yes.

6 To calm her down and before she went in there,  
7 Mr. Hackbart and I went into the bathroom and looked beyond  
8 the shower curtain and we also went into the bedroom be-  
9 cause we knew that she was going to have to get dressed and  
10 we looked in there to see if there was anybody there, and  
11 also in the closet.

12 Q You looked into the living room too, right?

13 A Yes.

14 Q And you also looked in the closets by the door  
15 into the apartment?

16 A Well, this was after we had seen the stuff on  
17 the floor.

18 Q What stuff on the floor?

19 A Well, there were men's clothing and shoes and so  
20 on on the floor in the living room.

21 Q You mean a pair of shoes and --

22 A I don't remember exactly. I think possibly there  
23 were two pairs of shoes, a shirt, a pair of pants.

24 Q Now, she was-- when I say "she" I mean Ms. George  
25 was in a night dress?

1 eb:mg 45

Meyers-direct

2 A Right.

3 Q And Ms. Marco was with her from the moment she got  
4 into the apartment until she left?

5 A Correct.

6 Q And it was apparent to you that she had no con-  
7 cealed weapons on her person, is that correct?

8 A That I could see, yes.

9 Q And, as a matter of fact, Ms. Marco took her into  
10 the bathroom where she did get dressed, isn't that correct?11 A I don't know if she got dressed in the bathroom  
12 or in the bedroom. I believe she got dressed in the bed-  
13 room, though.14 Q Now, while Ms. George was getting dressed and in  
15 the presence of Ms. Marco, did you search the apartment  
16 with Agent Hackbart?17 A The only thing we did was walk through the apart-  
18 ment. We didn't actually search. We opened the closet  
19 doors to make sure nobody was in there and we walked through  
20 the front room and we looked out on the terrace to make  
21 sure that there was no one there.

22 Q You looked in the bedroom closet though, right?

23 A Yes.

24 Q And you looked in the closet doors in the entryway?  
25 You have already testified to that?

2 A Yes.

3 Q Did you look inside the closet doors in the  
4 kitchen?

5 A Yes, we did.

6 Q And you looked inside the broom closet door in  
7 the kitchen?

8 A Yes, we did.

9 Q Could anybody have possibly fit inside of any of  
10 the closet doors in the kitchen, to your knowledge?

11 A Possibly, yes.

12 Q But improbable?

13 A Depends on how big a person you are.

14 Q Well, you were looking for Mr. Crutch, isn't that  
15 correct?

16 A There could have been numerous people in the  
17 apartment. We were not sure who was in the apartment.

18 Q About how long a period of time were you and  
19 your companions-- I mean Mr. Hackbart and Ms. Marco, in the  
20 apartment, from the time the door was opened until the time  
21 you left when you had Ms. George in custody?

22 A We made some phone calls. We were probably in there  
23 for approximately an hour.

24 Q Excuse me?

25 A We were in there approximately an hour.

1 eb:mg 47

Meyers-direct

2 Q An hour?

3 A Yes.

4 Q Could it have possibly been two hours?

5 A No, I don't believe so. No.

6 Q Now, do you recall who looked inside the closet  
7 in the foyer which is near the entry door to the apartment?

8 A That would have been Mr. Hackbart.

9 Q Were you there when he looked inside the closet?

10 A I was back towards the living area. We were a  
11 ways away from there, 15 feet, maybe 10 feet.12 Q This is immediately upon entering the apartment,  
13 right?14 A No, no. We did not look in the foyer or whatever  
15 you are calling it when we entered the apartment because  
16 we were standing right next to it, almost against it.17 Q So before you looked inside the closet and the  
18 foyer you were already in the living room, right?

19 A Correct.

20 Q And did you see anything in the living room?

21 A Yes.

22 Q What did you see in the living room?

23 A We saw these male clothes and shoes.

24 Q Aside from the clothes, did you see anything  
25 else?

1 eb:mg 48

Meyers-direct

2 A There was a credit card on top of the TV set.

3 Q Describe where the TV set was. Is the TV set  
4 across the entire living room near the outside wall of the  
5 apartment?6 A I'm not sure how you are describing the apartment  
7 now.

8 Q You have the front door which opens up?

9 A Right.

10 Q Directly in front of the front door you have got  
11 a corridor that runs back for approximately 12 feet or so  
12 which is length-of-the-hall closets on the right-hand  
13 side?

14 A Right.

15 Q After that you have a corridor that leads off  
16 into, right into the back area and then you have the L-  
17 shaped living room-dining room area?

18 A Right.

19 Q So that straight ahead from the front door all  
20 the way to the back where the television set was, approxi-  
21 mately how far would that be from the front door to the tele-  
22 vision set?

23 A I am estimating maybe 20 feet.

24 Q All right.

25 Would the back wall seem accurate, approximately

1 cb:mg 49

Meyers-direct

2 30 feet or so?

3 A I don't think it was quite that far.

4 Q Maybe a little bit closer?

5 A Yes.

6 Q Ms. George never went into the living room?

7 A Right.

8 Q You can see the entire living room, can't you?

9 A Not from the front door.

10 Q There were no closets in the living room?

11 A No, but the L-shaped part is on the other side  
12 and you can see it.

13 Q That happened to be the dining room, right?

14 A Right. It also covers part of the -- the L  
15 covers part of the living room.

16 Q It is an L-shaped living room-dining room?

17 A Right.

18 Q The tail end of the L which is a dining room  
19 you can see from the kitchen?

20 A Most of it, yes.

21 Q Did you at any time look in any of the cabinets  
22 in the kitchen?

23 A No.

24 Q Now about any of the drawers in the bedroom, did  
25 you look at those?

2 Q Did you look inside the bedroom closet?

3 A Yes.

4 Q Was anything in any of the drawers in the bedroom  
5 closet?

6 A Not that I can recall. We didn't look in there.

7 MR. EISENBERG: I have no further questions at  
8 this time.

9 THE COURT: Do you have any questions, Mr. Shulman?

10 MR. SHULMAN: One or two questions, your Honor.

## 11 CROSS-EXAMINATION

12 BY MR. SHULMAN:

13 Q When you entered the apartment, did you have a  
14 search warrant?

15 A Prior to arriving at the apartment?

16 Q Yes.

17 A No, we did not.

18 Q Now, did you call for a search warrant?

19 A Yes, sir, after entering the apartment, we did.

20 Q Who called?

21 A Mr. Hackbart did.

22 Q And did you commence searching at that time before  
23 you obtained the search warrant?

24 A No, we did not.

25 Q You state there was a credit card on the television

2 set, is that correct?

3 A Yes.

4 Q Do you know the name on the card?

5 A As near as I remember, the last name was Nobles  
6 and it was a Sunoco card.7 Q At that time when you saw this card, you didn't  
8 know whether it was a legitimate card or not, is that cor-  
9 rect?

10 A That is correct.

11 Q Now, did you at any time see any check come from  
12 the linen closet or fall from the linen closet?13 A I think the first time I saw the check was after  
14 Mr. Hackbart had said something about the check falling  
15 out and picked it up or whatever. That's where I first  
16 sighted the check.17 Q Was there a fan in the closet that blew the check  
18 down?

19 A Not to my knowledge, no.

20 Q Now you stated that Ms. Marco gave the defendant,  
21 Ms. George, her constitutional rights, is that correct?

22 A Yes. Ms. Marco did.

23 Q Did Ms. George make any phone call at that time?

24 A Not at that time. She made a call after she was  
25 dressed, I believe, as near as I remember.

1 eb:mg 52

Mevers-cross

2 Q To whom?

3 A I think she made it to Mr. Eisenberg's office.

4 Q Was that from the house or after she was taken  
5 away?

6 A That was made from the living room, I think.

7 Q Did anyone look in the refrigerator?

8 A No, not at that time.

9 MR. SHULMAN: No further questions.

10 Just one or two others. Excuse me.

11 Q Did you ever see Ms. George touch or handle any  
12 of the contraband?

13 A In the apartment?

14 Q Yes.

15 A No.

16 Q Was the contraband at any time in open view  
17 prior to the opening of the closets?

18 A The credit card was in open view.

19 Q But at that time you didn't know whether it was  
20 contraband, is that correct?21 A That's correct. I knew it was in a name other  
22 than Ms. George's name.23 Q So it could have been a legitimate card, is that  
24 correct?

25 A It is possible.

1 eb:mg 53

Meyers-cross/redirect

2 MR. SHULMAN: No further questions.

3 THE COURT: Thank you, Mr. Meyers, you may step  
4 down.

5 MR. EISENBERG: I have a very brief redirect.

6 I'm sorry, it is not redirect because -- well --

## 7 REDIRECT EXAMINATION

8 BY MR. EISENBERG:

9 Q Do you know anything about a certified check that  
10 was made payable to Macy's in the amount of \$1300?

11 A Yes.

12 Q What do you know about that?

13 A I know that I conducted some investigation con-  
14 cerning that check.15 Q Do you know when and where you conducted the  
16 investigation?17 A Yes. We went out to the Macy's Clearance Center  
18 on Long Island and it would have been in the middle part  
19 of August.

20 Q And did you have any photographs with you?

21 A Yes, we did.

22 Q Of who?

23 A We had a spread of photographs containing Mr. Laws  
24 and Mr. Crutch and various other individuals and we also  
25 had a spread of photographs of females.

2 Q Did you show these photographs to anybody?

3 A Yes.

4 Q Do you know who you showed them to?

5 A I don't recall the name right offhand.

6 Q Was it a man?

7 A No, it was a woman.

8 Q It was a woman?

9 A Yes.

10 Q Do you recall as to whether or not there was  
11 any identification made of the particular photographs you  
12 showed?

13 A Yes, an identification was made.

14 Q And what was that identification?

15 A They made an identification on Mr. Crutch as the  
16 man who was with the girl and then there was an identifica-  
17 tion made on Anna Jean - it wasn't quite positive but it  
18 was, you know, looked like the girl.

19 Q Maybe so?

20 A Yes.

21 Q Was not sure?

22 A Yes.

23 Q Do you know if anybody was ever prosecuted or  
24 if anybody was ever charged with this particular crime?

25 A To my knowledge, no.

2 MR. EISENBERG: No other questions, Judge.

3 THE COURT: All right, step down.

4 (Witness excused)

5 THE COURT: Any other witnesses?

6 MR. EISENBERG: Judge, may I approach the bench  
7 for a moment with the U. S. Attorney? I am interested in  
8 saving the Court's time.

9 THE COURT: I know you are but that does not  
10 mean that we have to have private conferences.

11 MR. EISENBERG: I call Christine Macho.

12 C H R I S T I N E M A C H O, called as a witness  
13 by Defendant Crutch, being first duly sworn, testified  
14 as follows:

15 DIRECT EXAMINATION

16 BY MR. EISENBERG:

17 Q Ms. Macho, before taking the stand just now,  
18 may I ask you where you were?

19 A In the witness room.

20 Q Are there any other witnesses in that room?

21 A There are.

22 Q Is Special Agent Dale Hackbart in that room?

23 A Yes.

24 Q Before testifying just now, did you have any  
25 conversation with him with respect to what he testified to

1 eb:mg 56

Macho- direct

2 in this case?

3 A No, I did not.

4 Q Did you speak to him at all about this case?

5 A Yes.

6 Q Just now?

7 A Yes.

8 Q Do you recall August 29, 1974 at Apartment No.6E  
9 located at 66-36 Yellowstone Boulevard in the County of  
10 Queens?

11 A Yes.

12 Q Did you arrive there some time after 8:30 in  
13 the morning?

14 A Yes.

15 Q Were you with Agent Hackbart and your partner,  
16 Mr. Meyers?

17 A Yes.

18 Q You had an arrest warrant for Anna Jean George  
19 from the Magistrate's Court in Southern District on an  
20 information complaint?

21 A Yes.

22 Q Correct?

23 A Yes.

24 Q And who knocked on the apartment door?

25 A I did.

2 Q What happened after that?

3 A We identified ourselves to her as Postal Inspec-  
4 tors.

5 Q Okay, just excuse me, but when you say "we," ex-  
6 actly who said what, if you recall?

7 A I knocked on the door. I said Post Office. She  
8 came to the door. She opened the door. I said, "Are you  
9 Anna Jean George?"

10 She indicated "yes" and at that time we entered  
11 the apartment. Wayne Meyers told her that she was under  
12 arrest. We had a warrant for her arrest on charges of  
13 mail fraud.

14 Q And you took her into the bathroom to get dressed  
15 because she was dressed in night clothes?

16 A Yes.

17 Q Did you search her?

18 A I didn't have to search her. She only had a  
19 nightgown on.

20 Q And it was apparent she had no concealed weapons  
21 on her or anything, right?

22 A Yes.

23 Q Did you see Agents Hackbart or Meyers at all after  
24 you took her into the bathroom?

25 A No. I took her into the bathroom, advised her of

1 eb:mg 58

Macho-direct

2 her rights there. We went right from the bathroom into  
3 the bedroom where she got dressed and I did not see them  
4 until after we got out into the living room.

5 Q So when you got into the apartment and she was  
6 placed under arrest, you advised her of her rights in the  
7 bathroom where there was nobody else present, just you and  
8 Ms. George?

9 A Right.

10 Q There was nobody else present when she got dressed  
11 in the bedroom, right?

12 A Aside from myself, no.

13 Q And nobody preceded you into the bathroom?

14 A Yes, they did.

15 Q Who did?

16 A Both Wayne and Dale, as we started back towards  
17 the room, they looked into the bathroom first and into the  
18 bedroom and I took her into the bathroom and closed the  
19 door.

20 Q You didn't see them again until after she was  
21 dressed?

22 A Right.

23 Q Did she make any comment to you about wanting to  
24 speak to her lawyer after you read her rights to her?

25 A I don't recall.

1 eb:mg 59

Macho-direct

2 Q Did she ask to speak to her lawyer or did she  
3 ask for her lawyer at any time while the three of you were  
4 in the apartment with her?

5 A I don't recall. I know that she didn't while we  
6 were in the bathroom. I remember that. She didn't say  
7 anything at all.

8 After that, after she was dressed and we were  
9 out in the front room, I don't recall.

10 Q Did you see Inspector Meyers or Agent Hackbart  
11 go through any particular closets or drawers in the apart-  
12 ment?

13 A The only closet door there was the bedroom closet  
14 door as we were going back to the bathroom. They went into  
15 the bathroom and then they went into the bedroom and I  
16 remember that Agent Hackbart did open the closet door in the  
17 bedroom.

18 Q But you don't know what they were doing while  
19 you were in the bathroom or while you were in the bedroom  
20 and Ms. George was getting dressed?

21 A No.

22 Q About how long were you in the apartment from  
23 the time you placed Ms. George under arrest until the time  
24 you all left?

25 A I'd say between an hour and a half to two hours.

1 eb:mg 60

Macho-direct/cross

2 Q Incidentally, do you know how long it took Ms.  
3 George to get dressed?

4 A I believe about anywhere from 10 to 15 minutes  
5 we were in the bedroom.

6 MR. EISENBERG: I have no other questions, Judge.

7 MR. SHULMAN: I have a few questions.

8 CROSS-EXAMINATION

9 BY MR. SHULMAN:

10 Q Now, you stated that it took about 10 or 15  
11 minutes from the time you entered the apartment until she  
12 got dressed, Ms. George, that is, is that correct?

13 A No, I didn't state that.

14 Q How long did it take?

15 A How long did it take for her to get dressed, just  
16 get dressed?

17 Q Yes.

18 A As I said, about 10 minutes in the bedroom.

19 Q And how much prior to the time that you took her  
20 into the apartment did you speak to Ms. George?

21 \* A (No response)

22 Q Was she-- how long was Ms. George in the apartment  
23 from the time that you walked into the apartment until  
24 she got dressed?

25 THE COURT: What kind of a question is that?

1 cb:mg 61

Macho-cross

2 MR. SHULMAN: It is important, your Honor.

3 THE COURT: She was in the apartment at all times,  
4 wasn't she?5 MR. SHULMAN: I want to know the time it took  
6 her from the time she walked into the apartment until  
7 Ms. George got dressed.8 THE COURT: Then your question was unclear to  
9 me.10 How long after this witness walked into the  
11 apartment?

12 MR. SHULMAN: Correct.

13 THE COURT: All right. The way you put it before  
14 it sounded like Ms. George was walking in and out of the  
15 apartment.

16 MR. SHULMAN: No.

17 A How long from the time I entered the apartment  
18 until she was dressed?

19 Q Yes.

20 A I'd say approximately 20 minutes.

21 Q 20 minutes?

22 A Yes.

23 Q Now, at that time Ms. George was under arrest,  
24 correct?

25 A Yes.

2 Q And at that time you should have been leaving with  
3 her, is that correct?

4 A Well, there were other things that happened when  
5 we came out of the bedroom after she had changed clothes.  
6 We went out to the couch, we sat down on the couch. I  
7 again advised her of her rights and showed her the form.

8 Q How long did that take?

9 A Well, 5 to 10 minutes.

10 Q So about 25 or 30 minutes was taken up, correct?

11 A Yes.

12 Q And then you were ready to leave, is that correct?

13 A As far as she was concerned, yes.

14 Q And did the three of you leave at that time?

15 A No, we did not.

16 Q Now, how long did you remain in the apartment  
17 after you gave her her rights?

18 A Between an hour to an hour and a half, I would  
19 say.

20 Q And what were you doing in the apartment for an  
21 hour and a half after you gave her her rights?

22 A Securing the apartment.

23 Q In what respect?

24 A Simply making sure that nothing happened to  
25 anything that was in the apartment, that it all stayed the

4 same from the time that we walked in until some other  
5 agents arrived.

6 Q Did you search the apartment? Did you do any  
7 searching in the apartment?

8 A No, I did not.

9 Q Do you know whether the other agents that arrived,  
10 the two other agents that arrived, did any searching?

11 A The only searching as far as I saw them do was  
12 to physically walk through the apartment back into the bath-  
13 room and open a closet door in the bedroom, and that's  
14 all.

15 Q Originally you came with Postal Inspector Meyers  
16 and Agent Hackbart, is that correct?

17 A Yes.

18 Q When did the others arrive?

19 A I believe about two hours after- - between an  
20 hour and a half to two hours after we entered the apart-  
21 ment.

22 Q And during that period of time they remained in  
23 the apartment although you did not have a search warrant at  
24 that time, is that correct?

25 A We were all in the apartment, yes. We all stayed  
in the apartment.

MR. SHULMAN: No further questions.

2 THE COURT: Thank you very much.

3 Step down.

4 (Witness excused)

5 THE COURT: Anything else? Is that everything,  
6 Mr. Eisenberg?

7 MR. EISENBERG: Yes, Judge, that's it.

8 THE COURT: Do you rest?

9 MR. SHULMAN: We rest.

10 THE COURT: Is the Government planning to call  
11 anybody?

12 MR. CUTNER: No, your Honor.

13 THE COURT: The motion to suppress is dismissed.

14 MR. EISENBERG: May I be heard first?

15 THE COURT: Yes.

16 MR. EISENBERG: Before the Judge makes a  
17 decision -- I think we have here a case that clearly violates  
18 the rule in the Shimmel case which is the governing case  
19 now, Judge.

20 As you know, that case states that they can only  
21 search as a lawful search incident to an arrest at arm's  
22 length, or to make sure that the accused or the defendant--

23 THE COURT: It doesn't say anything about arm's  
24 length at all.

25 MR. EISENBERG: Yes, it does, Judge.

2 THE COURT: The case doesn't talk about arm's  
3 length. It talks about a cursory search.

4 MR. EISENBERG: With all due respect, it speaks  
5 to arm's length.

6 THE COURT: Are you telling me that the Shimmel  
7 case says that you can search only as far as your arm can  
8 reach?

9 MR. EISENBERG: No, I didn't say that.

10 THE COURT: That's what I thought you were telling  
11 me.

12 MR. EISENBERG: I am saying that this search here  
13 without a warrant throughout the entire apartment is ex-  
14 pressly violative of the Shimmel case.

15 THE COURT: I understand your present point, yes.

16 MR. EISENBERG: Expressly. And if the evidence  
17 that was seized pursuant to this illegal search was used  
18 as the sole evidence or the sole contraband as alleged in  
19 the affidavit for a search warrant, then it is the fruits  
20 of a poisonous tree and cannot be used, and therefore the  
21 entire warrant must fall as the affidavit is based upon il-  
22 legally seized evidence used for probable cause. It is just  
23 no good.

24 THE COURT: Mr. Shulman, is there anything you  
25 want to say?

2 MR. SHULMAN: Your Honor, I will just join in  
3 the motion.

4 THE COURT: The Court finds that the officers  
5 who came to the apartment had an arrest warrant; the  
6 officers with a warrant have authority to conduct a cursory  
7 search to make sure that there are no other persons present.

8 This is based on security considerations.

9 The search that was conducted here was not a  
10 general search in any sense of the word, and the inadvertent  
11 discovery of the credit card does not taint the search  
12 warrant nor does the inadvertent discovery of the fluttering  
13 check or the check machine which was in plain view.

14 The search was in all respects a restrained and  
15 proper search and conducted lawfully and the motion to  
16 suppress on the ground of illegal search is denied.

17 MR. EISENBERG: I respectfully except, Judge.

18 MR. SHULMAN: Exception.

19 THE COURT: All right, gentlemen.

20 MR. SHULMAN: As far as this case is concerned,  
21 I was here on the motion to suppress and the hearing.

22 However, Mr. Laifer, my partner, will be the trial  
23 counsel at that time. I just wanted to inform the Court.  
24 I will file the notice of appearance now.

25 THE COURT: I take it that that concludes

2 all the motions that are to be made before the trial?

3 MR. EISENBERG: Right.

4 THE COURT: In other words, you have no further  
5 motions, Mr. Shulman?

6 MR. SHULMAN: Not that I know of, Judge.

7 THE COURT: All right.

8 Thank you.

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1 UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
2 :Before:  
3 UNITED STATES OF AMERICA :HON. MILTON POLLACK,  
4 : District Judge  
vs. : and a Jury  
5 :  
6 ISAIAH CRUTCH, a/k/a ALEXANDER :  
JACKSON, ANNA JEAN GEORGE : 75 CRIM. 418  
a/k/a ALICE HOLMES, :  
7 Defendants. :  
8 -----x

New York, August 20, 21, 22, 1975  
October 3, 1975

21 STENOGRAPHER'S MINUTES

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(Case called)

2      MS. STRAUSS: Government is ready.

3      MR. LAIFER: May we have permission to approach  
4      the side bar?

5      THE COURT: We don't have side bar conferences.  
6      That is a way of wasting time.

7      MR. EISENBERG: There must be something that  
8      must be discussed out of the presence of the jury.

9      THE COURT: Why didn't you call it to my atten-  
10     tion before we convened?

11     MR. EISENBERG: It is something that should be  
12     taken up by the Court.

13     THE COURT: Give me a memo on it. We are not  
14     going to waste any time during the course of this trial.

15     MR. EISENBERG: It has to do with a motion made  
16     and a hearing in this court. Your Honor only rendered a  
17     partial decision.

18     THE COURT: Come up to the side bar. This  
19     will be the last side bar conference in this matter.

20     (At the side bar.)

21     MR. EISENBERG: The last time we appeared we  
22     had the Simmons hearing and my motion to controvert the war-  
23     rant, alleging the search of the apartment on Yellowstone  
24     Boulevard was a clear violation of the Shimel rule. Your  
25     Honor held the search of the apartment at the time they

2        executed the arrest to arrest Mrs. George was merely a  
3        cursory search to protect the officer's safety.    The items  
4        they found therein were legally seized.    However, the  
5        second half of my motion, Judge, was that, albeit even if  
6        the Court has ruled that those items were legally seized --  
7        and I am talking about the checkwriting machine, a blank  
8        check that was found and a credit card that was found on  
9        top of a television -- that in and of itself those three  
10       items are insufficient to sustain probable cause or insuf-  
11       ficient probable cause to sustain the issuance of the  
12       search warrant.    I believe your Honor did not rule on that  
13       part of it.

14                    THE COURT:    I think I did rule on it.    That  
15       motion was denied at the same time.

16                    If I did not deny it, then vocally I deny it  
17       now.

18                    MR. EISENBERG:    Exception, your Honor.

19                    (In open court.)

20                    (A jury of twelve and two alternate jurors  
21       were duly impaneled and sworn.)

22                    THE COURT:    Before we hear the opening state-  
23       ments of the lawyers I am going to ask the clerk to take the  
24       jury into the jury room so that you know where the jury  
25       room is.    This is the 15th floor, and the clerk will show

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### Hackbart-direct

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2 you. So let us leave the subject right here.

3 (Jury present.)

4 THE COURT: All right, Ms. Strauss, please go  
5 ahead.

6 BY MS. STRAUSS:

7 Q Mr. Hackbart, just to refresh where we were --

10 MS. STRAUSS: Yes, your Honor.

11 (Record read.)

12 THE COURT: You may go ahead.

13 THE WITNESS: We went into the apartment.

14 As I mentioned before, Miss George was not dressed in street-  
15 type clothes. It was normal procedure for us to go in --

16 THE COURT: Please just state what occurred.

17 Don't tell us your procedure.

18 THE WITNESS: All right.

19 We went in, we searched the apartment to make  
20 sure that no one else was in the apartment. At the time  
21 we searched the apartment, to make sure no one else was in  
22 the apartment, we found items that were in open view, which  
23 we thought were questionable.

24 MR. LAIFER: Objection to what they thought.

25 THE COURT: Strike out what you thought. You

2 found items. Then what happened?

27 3 A We called -- we found items. We made -- I  
4 made a few phone calls.

5 THE COURT: What did you do with the items?  
6 Did you take them?

7 THE WITNESS: No, sir. We just left them right  
8 where they were. I made a phone call to an individual by  
9 the name of John Shaffner.

10 THE COURT: Don't tell us the conversation.

11 THE WITNESS: Okay. I then made a phone call  
12 to the Assistant United States Attorney in the Eastern  
13 District of New York. We -- well --

14 THE COURT: What else happened in the apartment?

15 THE WITNESS: At that point, after I made the  
16 phone calls, we waited for Miss George to get dressed.  
17 We also waited for two additional postal inspectors to come  
18 over to the apartment to seal off the apartment, since we  
19 had had authorization to obtain a search warrant from the --

20 MR. LAIFER: Objection, Judge.

21 THE COURT: Strike out the authorization that  
22 you obtained.

23 Yes? And did the two arrive?

24 THE WITNESS: Yes, sir. They arrived approx-  
25 imately about an hour, an hour and twenty minutes after

2 BY MS. STRAUSS:

3 Q I show you Government's Exhibits 14-A through  
4 14-F. Can you identify those items?5 A These are part of the items that we obtained  
6 during the search warrant. They are personnel profiles.7 MR. LAIFER: Objection to what they are at this  
8 time, Judge.9 THE COURT: All right. The objection is  
10 sustained.

11 Those are the items you found?

12 THE WITNESS: That we found, yes, sir.

13 MS. STRAUSS: The Government offers these  
14 exhibits at this time.

15 MR. LAIFER: May I have a voir dire, your Honor?

16 THE COURT: Yes.

17 MR. LAIFER: Thank you. It is 14-A through 14-F?

18 MS. STRAUSS: Yes.

19 MR. LAIFER: Thank you.

## 20 VOIR DIRE EXAMINATION

21 BY MR. LAIFER:

22 Q Good morning, Mr. Hackbart.

23 A Good morning.

24 Q Sir, these particular items, 14-A through 14-F,  
25 where were they found?

2           MS. STRAUS: Your Honor, may I be heard?

3           THE COURT: Just a minute, please.

4           Exhibits 14-B, 14-C, 14-E and 14-F.

5           Has 14-A been offered in evidence?

6           MS. STRAUSS: It is being offered, your Honor,  
7           yes.

8           THE COURT: 14-A is received in evidence.

9           I want to make an inquiry of counsel, which I  
10          will write out.

11          Please show that to Government counsel and then  
12          to defendants' counsel. Just respond on the note.

13          Exhibit 14-D may continue to be marked for  
14          identification only at this time. Now return these exhibits  
15          to Government's counsel.

16          (Government's Exhibit 14-A was received in  
17          evidence.)

xx 18          MR. LAIFER: Your Honor, that is, of course,  
19          over objection after voir dire.

20          THE COURT: And return all of the papers to the  
21          Government.

22          MS. STRAUSS: Your Honor, may I be heard as to  
23          the relevancy of the other exhibits?

24          THE COURT: I am at the present time ruling that  
25          foundation is required.

2                    MS. STRAUSS: Very well, your Honor.

3                    FURTHER DIRECT EXAMINATION

4                    BY MS. STRAUSS:

5                    Q        Showing you Government Exhibit 15-A for identi-  
6                    fication --

7                    MR. LAIFER: I am sorry, I did not get the  
8                    letter.

9                    MS. STRAUSS: 15-A.

10                  MR. LAIFER: Thank you.

11                  Q        -- can you identify that document?

12                  A        These are two more items which we found during  
13                  the search.

14                  MS. STRAUSS: The Government offers 15-A.

15                  MR. LAIFER: Your Honor, may I have a short  
16                  voir dire?

17                  THE COURT: Yes.

18                  MR. LAIFER: Thank you.

19                  VOIR DIRE EXAMINATION

20                  BY MR. LAIFER:

21                  Q        Mr. Hackbart, where were these items found?

22                  A        Where were those items found?

23                  Q        Yes.

24                  A        In the bedroom.

25                  Q        Where in the bedroom, and did you find them?

2                    THE COURT: Exhibit 15-A is received in evidence.

3                    The objection is overruled.

4                    (Government's Exhibit 15-A was received in  
5                    evidence.)xx        6                    MR. EISENBERG: Judge, against my client I am  
7                    going to object on the grounds of no connection, Judge.8                    THE COURT: I have already ruled that where  
9                    references are made to a particular client, there has to be  
10                   a connection to the other party as part of the evidence,  
11                   either by direct evidence or necessary circumstantial  
12                   inferences.13                    MR. LAIFER: Your Honor, my objection is also  
14                    on connection.

15                    THE COURT: Yes. I know.

16                    Go ahead.

17                    FURTHER DIRECT EXAMINATION

18                    BY MS. STRAUSS:

19                    Q        I show you Government's Exhibit 16-A for iden-  
20                    tification.

21                    Can you identify that?

22                    A        This is another one of the items we found in the  
23                    apartment.

24                    MS. STRAUSS: The Government offers 16-A.

25                    MR. LAIFER: A short voir dire, Judge?

2                   THE WITNESS: I do not, no, sir.

3                   THE COURT: But you personally vouch for the  
4                   fact that it was taken from that apartment in connection  
5                   with that examination?

6                   THE WITNESS: Yes, sir, I do.

7                   BY MR. LAIFER:

8                   Q        Based on what someone else told you, is that  
9                   correct?

10                  THE COURT: Based upon the circumstances.

11                  MR. LAIFER: I object on the grounds of hearsay.

12                  THE COURT: Objection is overruled. The docu-  
13                  ment is received.

14                  (Government's Exhibit 16-A was received in  
15                  evidence.)

16                  FURTHER DIRECT EXAMINATION

17                  BY MS. STRAUSS:

18                  Q        Mr. Hackbart, can you explain the inventory  
19                  procedure as reflected in this document (handing)?

20                  A        The inventory procedure? When we receive --  
21                  I, FBI agent, receives an item which may be used as evidence  
22                  in any one of our pending cases, I will physically take  
23                  possession of the item, take it back to my office, prepare  
24                  an exhibit envelope, which is simply a letter-size envelope,  
25                  assign a case number to it, which is the particular case

2 THE COURT: Just hand it to the jury. Let them  
3 look at it two at a time.

4 (Handed.)

5 BY MS. STRAUSS:

6 Q I show you Government's Exhibit 17-A and 18-A.  
7 Can you identify these items?

8 A These are two more items taken during the search  
9 of the apartment.

10 Q Bearing your inventory numbers also?

11 A Yes, ma'am, they are.

12 MS. STRAUSS: The Government offers 17-A and  
13 18-A.

14 MR. LAIFER: May I have a short voir dire, Judge?

15 THE COURT: Yes.

16 VOIR DIRE EXAMINATION

17 BY MR. LAIFER:

18 Q Where were these items found, sir?

19 A In the bedroom.

20 Q You were present when they were found?

21 A Yes, sir.

22 Q You saw them recovered?

23 A Again, same as the previous items, they were in  
24 the bedroom.

25 Q Did someone tell you that?

2        A        No, sir, I was there when they were recovered.

3        Q        Where were they found in the bedroom?

4        A        I believe those were found in the dresser, the  
5        same dresser as the other item we talked about.

29      6        Q        Again, did you ever see either of these defend-  
7        ants handle or touch these items?

8        A        No, sir.

9        Q        Do you know how long they were there?

10      A        No, sir.

11      Q        Do you know who put them there?

12      A        No, sir.

13      MR. LAIFER: Objection, Judge.    No connection.

14      THE COURT: Let me look at them.

15      Objection is overruled.    Both are received in  
16      evidence, subject to the standing rulings as to connection.

17      (Government's Exhibits 17-A and 18-A were  
18      received in evidence.)

xx      19      FURTHER DIRECT EXAMINATION

20      BY MS. STRAUSS:

21      Q        Showing you Government's Exhibits 19-A and 20-A,  
22      can you identify those items?

23      A        These are again items taken during the search  
24      of the apartment.

25      MS. STRAUSS: The Government offers 19-A and 20-A.

2       were there, do you?

3       A       No, sir, I do not.

4                    MR. LAIFER: Objection as to Mrs. George.

5                    THE COURT: Overruled.

6                    (Government's Exhibits 19-A and 20-A were  
7                    received in evidence.)

xx      8       FURTHER DIRECT EXAMINATION

9       BY MS. STRAUSS:

10      Q       I show you Government's Exhibits 21-A and 22-A.  
11      Can you identify those?12      A       Yes, ma'am. These are additional items  
13      found at the time of our search.14      MS. STRAUSS: The Government offers Exhibits 21-A  
15      and 22-A.16      Your Honor, would it be possible to display this  
17      to the jury?

18      THE COURT: I beg your pardon?

19      MS. SGRAUSS: Would it be possible to just display  
20      this to the entire jury, just to expedite the matter of their  
21      looking at it?22      THE COURT: You mean you want to state what it is?  
23      Is that what you are saying?

24      MS. STRAUSS: Perhaps just hold it up.

25      THE COURT: Well, hold it up. Can everybody

2        A        No, sir.

3        Q        Did you ever see my client handle or touch it?

4        A        No, sir.

5        Q        Did she make any statements about it?

6        A        No, sir.

7        Q        Do you know whether or not she knew it was even  
8        there?

9        A        No, sir.

10        MR. LAIFER: Your Honor, I object.

11        THE COURT: Let me see the two documents.

12        Let me see the American Express file that is in  
13        evidence.14        The objections are overruled.      Exhibits 21-A  
15        and 22-A are received in evidence.16        (Government's Exhibits 21-A and 22-A were  
17        received in evidence.)

xx

## 18        FURTHER DIRECT EXAMINATION

19        BY MS. STRAUSS:

20        Q        I show you Government's Exhibits 23-A, 24-A and  
21        25-A.

22        Can you identify those items?

23        A        These are items obtained during the search of  
24        the apartment.

25        MS. STRAUSS: The Government offers these three

2            Q      With respect to the items that were found, those  
3      papers --

4            A      Yes, sir.

5            Q      -- did you ever see my client touch any of those  
6      papers?

7            A      Specifically those papers, no, sir.

8            Q      Did he ever make any admissions with respect to  
9      those papers?

10          A      No, sir.

11          Q      Did you ever see them in his possession?

12          A      No, sir.

13          MR. EISENBERG: I respectfully object.

14          THE COURT: The objection of the defendant Crutch  
15      is overruled. The item is received as against him and  
16      subject to connection as to the other defendant.

17          (Government's Exhibit 34-A was received in  
18      evidence.)

xx        19      FURTHER DIRECT EXAMINATION

20      BY MS. STRAUSS:

21          Q      Showing you Government's Exhibit 28-A, can you  
22      identify that?

23          A      Yes, ma'am. This is another item obtained  
24      during the search.

25          MR. LAIFER: I am sorry, your Honor, there is

2  
registered nurse employed at the Elmhurst Hospital?

3  
A I am sorry?

4  
Q Did you ascertain at that time that she was a  
5 registered nurse employed at the Elmhurst Hospital?

6  
A I ascertained that she was a nurse at the  
7 hospital.

8  
Q Did you ascertain that her working hours were  
9 from eight in the morning till four in the afternoon?

10  
A I don't recall.

11  
Q But, in any event, you recall going to her  
12 premises on her day off?

13  
A I recall going to her premises.

14  
Q Did you go there specifically because it was her  
15 day off?

16  
A I don't recall specifically her work statement.

17  
Q After this five-minute period of time, she was  
18 taken in, dressed, she got dressed apparently, with Miss  
19 Macho being present --

20  
A Yes.

21  
Q -- in either the bedroom or bathroom of the  
22 premises, is that correct?

23  
A Yes.

24  
Q By the way, did she get dressed in the bathroom  
25 or in the bedroom?

2      A      I was in the living room.      I don't know.  
3      Q      You don't know.  
4      A      No.  
5      Q      And she came out, is that correct?  
6      A      Yes.  
7      Q      She was taken out of the apartment?  
8      A      No, sir.

9

10     (continued on next page)

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24

2       Q       What happened then?

3       A       The three of us, four of us sat down on the  
4       couch.      Miss Macho asked her if she would be willing to  
5       talk to us.    She said she would not without first consult-  
6       ing her attorney, but that she would give us personal inform-  
7       ation.       At this point Miss Macho sat down and got the  
8       information, and we searched the apartment to make sure no  
9       one else was there.10      Q       When was it after that that Mrs. George left the  
11      apartment?12      A       After that would have been approximately quarter  
13      to eleven.

14      Q       A quarter to eleven?

15      A       Yes.

16      Q       So how long were you with her in that apartment  
17      in toto?

18      A       Two or three hours.

19      Q       Prior to this date did you ever see Mrs. George  
20      at that apartment?

21      A       No, sir.

22      Q       Do you know of your own personal knowledge  
23      whether she had been there the day before at that apartment?

24      A       No, sir.

25      Q       Or any day in the month before?

2 THE COURT: We have not come to summation.  
3 This is the defendants' case.

4 MS. STRAUSS: In the event that we were to  
5 proceed, would I have an opportunity?

6 THE COURT: In the event we were to proceed, you  
7 would get time.

8 MS. STRAUSS: Thank you.

9 MR. LAIFER: We would join in that, Judge.

10 MR. EISENBERG: Yes.

11 MS. STRAUSS: Your Honor, before the Government  
12 rests in front of the jury, are matters subject to connection  
13 to be taken up?

14 THE COURT: Everything that is in is in.

15 (Jury present.)

16 THE COURT: The defense may proceed in this case.

17 MR. EISENBERG: Judge, I rest.

18 THE COURT: The defendant Crutch rests.

19 MR. LAIFER: Yes, your Honor, at this time the  
20 defendant Anna Jean George respectfully rests.

21 THE COURT: And the Government has rested.

22 All parties have rested?

23 MS. STRAUSS: Yes, your Honor.

24 THE COURT: All right. We will then take a  
25 moment to give counsel an opportunity to assemble the

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wes  
which the law will explain to you, and that is the proof  
of an overt act of the conspiracy. There are three overt  
acts alleged in the indictment. The Government has proved  
all three, although it only need prove one.

Just to point out one of the overt acts, it is  
alleged in the indictment that Anna Jean George mailed a  
credit card application to Gimbels in the name of Alice  
Holmes, using as her employer Data Computer Profile.

Government's Exhibit 3-A is that application. The handwriting expert says that Anna Jean George filled it out and signed it. There is a postmark on the exhibit. So, just as an example, that overt act is completely proved.

Ladies and gentlemen, this case does not show an individual one-time action on the part of either defendant. It shows a course of conduct by each of them and by both of them acting together. What was the motive here? You ask yourselves. It was plain-out greed.

Who are the victims? In the first instance, it is the credit card companies. In the first instance, it is the department stores. But we all know that in the end it is passed down to everybody else.

MR. EISENBERG: Objection, your Honor.

THE COURT: Overruled.

MS. STRAUSS: And law-abiding citizens, like each

2      of you, who work hard for your money, are forced to pay  
3      the price for this kind of fraud and dishonesty.

4                    MR. LAIFER: Judge, I move to strike all of that.

5                    MR. EISENBERG: Objection.

6                    MR. LAIFER: As being inflammatory, irrelevant,  
7      having nothing to do with the facts or the law of this case.

8                    THE COURT: Motion denied. This is argument.

9      That is her opinion.

10                  MS. STRAUSS: Law-abiding citizens like your-  
11      selves are forced to pay the price for the fraud and dis-  
12      honesty of these defendants.

13                  This fraud was deliberate, it was well planned,  
14      it was very successful. The Government has proved it  
15      by overwhelming evidence. Ladies and gentlemen, on that  
16      evidence these defendants, Anna Jean George and Isaiah  
17      Crutch, must be found guilty as charged.

18                  THE COURT: I had planned to have the lawyers  
19      for the defendant sum up after lunch. If either one wants  
20      to make a short summation now, they may, or else they may  
21      reserve until after lunch.

22                  MR. LAIFER: May we please reserve, your Honor?

23                  THE COURT: All right.

24                  MR. LAIFER: Thank you.

25                  THE COURT: Then we will go out to lunch now,

## 2 CHARGE OF THE COURT

3 THE COURT: Mr. Hall and ladies and gentlemen of  
4 the jury:5 Isaiah Crutch and Anna Jean George were indicted  
6 by a Grand Jury on accusations that they filed charge and  
7 credit card applications using false names and providing  
8 false and fraudulent employment information. They are  
9 charged with thus obtaining charge accounts and credit cards  
10 and with obtaining goods, services, money and other property  
11 thereby for which they did not pay.12 The indictment also charges that the defendants  
13 together with others conspired and schemed to commit such  
14 offenses and used the mails to commit and to attempt to  
15 execute such schemes and used fictitious and assumed names to  
16 carry on such schemes and frauds.17 Through the arguments of the respective counsel  
18 you have learned the conclusions which each party believes  
19 should be drawn from the evidence presented to you. You  
20 must remember, however, that the statements, conclusions,  
21 opinions and theories of counsel are not evidence and are not  
22 to be considered as such. In my instructions I may refer to  
23 some of the evidence or contentions in the case. However, it  
24 is your recollection of the facts that counts here, not that  
25 of the lawyers and not mine. This is not a popularity contest.

2                   It is for you to determine the weight that will be given to  
3                   evidence, the credibility that you will extend to the  
4                   witnesses who testified, and the reasonable inferences that  
5                   are to be drawn from the evidence that has been received.

6                   In order to return a verdict of not guilty or  
7                   guilty in this case on any count -- and each count must be  
8                   decided separately -- the verdict must be unanimous. Each  
9                   juror must agree to it. The verdict must be unanimous as to  
10                   the count to which you are reporting and must represent each  
11                   juror's individual judgment.

12                   It is your exclusive function to determine the  
13                   facts on the basis of your consideration of the evidence. It  
14                   is your duty to accept my instructions as to the law to be  
15                   followed in the case. You will then apply these instructions  
16                   to the facts as you find them and decide whether or not the  
17                   defendant or defendants on trial before you are guilty of  
18                   the charges that have been made against them. When you go  
19                   into a jury box, you don't check your common sense outside.  
20                   You will use your common sense and general experience.

21                   No inference of guilt or innocence of the  
22                   defendants on trial or as to the credibility of any witness  
23                   should be drawn from any rulings or comments that I may have  
24                   made during the trial. It was neither my intention nor my  
25                   function to favor one side or the other or to imply that I

2      have any views either as to the credibility of the  
3      witnesses or the guilt or innocence of the defendant. That  
4      is your exclusive function. My job was to keep this case  
5      moving in an orderly fashion so that you could hear and see  
6      the evidence and make your determinations on the evidence.

7              The defendants pleaded not guilty to the  
8      indictment. That means that the Government has the burden of  
9      proving guilt beyond a reasonable doubt with respect to each  
10     element of the crime that each defendant is accused of having  
11     committed.

12              A defendant, in our courts, is presumed to be  
13     innocent, and that presumption continues in his or her favor  
14     throughout the trial and throughout your deliberations. It is  
15     only overcome when you have determined that the evidence  
16     on the basis of your resolution of the facts has shown that  
17     guilt was established beyond a reasonable doubt on each  
18     material element of the crimes charged.

19              Reasonable doubt means a doubt which is sufficient  
20     to cause a prudent person to hesitate to act in a matter of  
21     importance to himself or herself.

22              If the evidence which you believe is such as would  
23     induce a prudent person to act without hesitation in a matter  
24     of importance to himself or herself, then you may say that you  
25     have been convinced beyond a reasonable doubt.

2                    Do not confuse reasonable doubt with imaginary  
3      notions or possibilities resting upon mere conjecture and not  
4      arising or deducible from the proof. That is not what  
5      reasonable doubt is.

6                    A doubt suggested by the ingenuity of counsel or  
7      even your own ingenuity, not legitimately warranted by the  
8      evidence or the want of it, or one borne of the merciful  
9      inclination to permit a defendant to escape the penalty of  
10     the law even if that has been violated, or one prompted by  
11     sympathy for the defendant, is not what is meant by reasonable  
12     doubt.

13                  If, on the other hand, your mind is wavering or  
14     uncertain to the point where you have a doubt that would cause  
15     a prudent person to hesitate in a matter of importance to him  
16     or her, then you have not been convinced beyond a reasonable  
17     doubt.

18                  As I have stated, you are going to have to  
19     proceed with your sworn duty in this case with integrity and  
20     common sense, and use your general experience in evaluating  
21     the evidence. You must make your own evaluation of the  
22     evidence, including the testimony given by each of the  
23     witnesses, and determine the credibility which you choose to  
24     give to such evidence.

25                  In weighing the testimony of the witnesses, you can

2       consider any relationship that they may have to the  
3       Government or to the defendant, if any, and any interest they  
4       may have in the outcome of the case, any bias they may have  
5       shown, the witness' manner while testifying, that is, the  
6       witness' candor, intelligence, whether the witness equivocated  
7       or whether the witness was frank and straightforward, the  
8       extent to which the witness has been corroborated or contra-  
9       dicted by other credible evidence or circumstances or in-  
10       consistencies within the testimony.

11            You had fifteen witnesses called before you,  
12       and the roster was as follows:

13            Samuel Ballin - He rents business offices and  
14       telephone answering and mail service at 507 Fifth Avenue and  
15       other places.

16            Joseph J. Ryan - An investigator of the Chemical  
17       Bank Master Charge department.

18            Robert T. Speziale - American Express credit card  
19       department.

20            John Dusencheck - First National City Bank Master  
21       Charge department.

22            James Tsokalas - Senior Investigator of R.H. Macy &  
23       Co.

24            John Peters - Investigator for Diners Club.

25            Carmine Ramirez - Credit analyst of Saks Fifth

1 || wc 6

Charge of the Court

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2 Avenue.

5 Detleff Vormschlag - The manager of an automobile  
6 leasing business in New Jersey.

11 Dale Hackbart - Federal Bureau of Investigation  
12 Special Agent, who made the arrest you learned of.

13 Wayne Meyers - A postal inspector.

17 John E. Murray - A document analyst from the  
18 Crime Laboratory in Washington, D.C.

If you believe a witness has testified falsely before you, you are privileged to disregard his or her testimony in whole or only in part. A man or a woman may be lying or inaccurate or untruthful about part of what he or she says and may be telling the truth about all other parts. It is for you to separate out what you believe and what you disbelieve. He or she may be merely mistaken about parts and

2      be accurate as to other parts. It is not unusual for people  
3      to make mistakes. That does not necessarily spell general  
4      untrustworthiness. It is for you to decide, after you have  
5      scrutinized the evidence and weighed what the witnesses had  
6      to say and the way they said it, what the fact is. It is  
7      important to keep in mind what the issue really is and not  
8      get sidetracked or confused by incidental matters, unless you  
9      find those matters to be indicative on some material issue in  
10     the case.

11           The law recognizes two types of evidence, direct  
12     and circumstantial, either of which may be sufficient to  
13     convict, provided the jury upon all the evidence is satisfied  
14     beyond a reasonable doubt.

15           Direct evidence, of course, is that kind of  
16     evidence where a witness was present at a conversation or the  
17     commission of an act and testifies to what he or she saw or  
18     what he or she heard or discovered, what he or she knows of  
19     his or her own knowledge, something which comes to him or her  
20     by virtue of the senses of sight or sound or smell, or some-  
21     thing which appears in writing signed by the witness or  
22     signed in his or her presence.

23           Circumstantial evidence is, as I think most of  
24     you know, evidence that tends to prove a disputed fact by  
25     proof of other facts and evidence which has a logical tendency

- 8 -

WC 8

Charge of the Court

2 to lead one's mind to conclude a fact in issue actually  
3 exists. Circumstantial evidence should not be given any  
4 less weight because it is circumstantial rather than direct.

Let me give you a simple illustration of circumstantial evidence which we frequently give to jurors. Suppose at the time that you came into court this morning the sun was shining and there were no clouds in the sky, and when you came into this trial courtroom the shades were drawn and the blinds were down, so that you couldn't see outside. Pretty soon someone came through that door, walking into the courtroom with a dripping umbrella and a dripping raincoat. You haven't been outside in the meantime. When you left outside it was clear, but when these people came in with their dripping umbrellas and raincoats, something may have happened outside. You would be entitled to infer from the circumstances that there is a dripping umbrella and a raincoat that it is raining outside. Thus, circumstantially you infer from a fact, the dripping raincoat and umbrella, some other matter, the rain outside. The mind is led circumstantially from a fact to reach another fact.

22

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That will give you an illustration of what circumstantial evidence is and what it may lead to.

24 As you already know, the indictment in this case  
25 named two defendants -- Isaiah Crutch and Anna Jean George.

2      Both defendants are on trial before you. According to the  
3      indictment, Mr. Crutch is also known as Alexander Jackson,  
4      and Ms. George is also known as Alice Holmes.

5              The indictment in this case is not evidence; it  
6      is merely an accusation and carries no evidentiary weight.  
7      In the determination whether the defendant is guilty or not  
8      guilty, you must bear in mind that guilt is personal.  
9      Whether the defendant on trial before you is guilty or not  
10     guilty must be determined separately with respect to him or  
11     her solely on the evidence presented against him or her, or  
12     the lack of evidence.

13              The case as to each defendant stands or falls on  
14     the proof or lack of proof of the charge against him or her  
15     and not against somebody else.

16              The defendants did not testify on their own  
17     behalf, and our law does not require them to do so. The fact  
18     that they did not testify cannot be considered by you as  
19     evidence against them or form any presumption or inference  
20     unfavorable to them. The fact that they did not testify  
21     should not enter into your deliberations or discussions.  
22     They were not required under the law of our land to establish  
23     their innocence. It is for the Government to establish their  
24     guilt beyond a reasonable doubt.

25              The indictment charges in Counts 2 through 5 that

2      the defendants committed the crime of mail fraud on four  
3      separate occasions. It charges in Counts 6 through 9 that  
4      the defendants committed the crime of using false names in  
5      connection with mail fraud. The first count of the indictment  
6      charges that the two defendants conspired together to violate  
7      the mail fraud statutes.

8                    I will discuss first the charges of mail fraud.

9                    Counts 2 through 5 of the indictment read as follows:

10                  "The Grand Jury further charges:

11                  "1. From on or about the 1st day of January, 1973,  
12      up to and including the date of the filing of this indictment,  
13      in the Southern District of New York, Isaiah Crutch, also  
14      known as Alexander Jackson, and Anna Jean George, also known  
15      as Alice Holmes, the defendants, unlawfully, wilfully and  
16      knowingly did devise, and intend to devise, a scheme and  
17      artifice to defraud merchants, credit card companies, and  
18      banks as hereinafter set forth, and to obtain money and  
19      property by means of false and fraudulent pretenses and  
20      representations.

21                  "2. It was a part of said scheme and artifice  
22      to defraud that said defendants would and did file charge  
23      account and credit card applications, and obtain charge  
24      accounts and credit cards, using false names and providing  
25      false and fraudulent employment information.

2 "3. On or about the dates hereinafter set forth,  
3 in the Southern District of New York, Isaiah Crutch, also  
4 known as Alexander Jackson, and Anna Jean George, also known as  
5 Alice Holmes, the defendants, unlawfully, wilfully and  
6 knowingly, and for the purpose of executing and attempting to  
7 execute said scheme and artifice to defraud, did take and  
8 receive from the Postal Service, and knowingly cause to be  
9 delivered by mail according to the direction thereon, mail  
10 matter sent and delivered by the Postal Service:

11 "Count 2 - On April 24, 1974, a Saks Fifth Avenue  
12 credit card

13 "Count 3 - On April 3, 1974, a Diners Club credit  
14 card

15 "Count 4 - On March 1, 1974, an R.H. Macy & Co.  
16 credit card.

17 "Count 5 - On April 4, 1974, an American Express  
18 credit card."

19 To establish that the defendants are guilty of the  
20 crime of mail fraud as charged in Counts 2 through 5, the  
21 Government must prove beyond a reasonable doubt each of the  
22 following elements:

23 1. That on or about the dates alleged in the  
24 indictment the defendant under consideration devised or  
25 intended to devise a scheme or artifice to defraud or to

2      obtain money or property by fraudulent pretenses or  
3      representations.

4                2. That the defendant you are considering did  
5      devise or become a party to such a scheme or artifice knowing-  
6      ly, wilfully, with knowledge of its fraudulent nature and  
7      with intent to defraud.

8                3. That for the purpose of executing the scheme  
9      or artifice he or she did use or cause another to use the  
10     mails.

11               The first element of the mail fraud counts is the  
12      existence of a scheme or artifice to defraud. The language  
13      describing this first element is almost self-explanatory.

14               A "scheme or artifice" is merely a plan for the  
15      accomplishment of an object. Such a scheme or artifice may be  
16      found to exist without evidence of any formal action to make  
17      it effective.

18               "Fraud" is a generic term which embraces all the  
19      many kinds of means which human ingenuity can devise and which  
20      are resorted to by one individual to gain an advantage over  
21      another by false representation, suggestions or by suppression  
22      of the truth.

23               Thus, a scheme or artifice to defraud is any plan  
24      or device by which one seeks to induce another to act in a way  
25      detrimental to his or its interests by means of representations

2      as to a material fact which are false and untrue. Such  
3      representations may be made in two ways: by statements of a  
4      material fact which just are not true, and also by the  
5      omission from a statement purporting to state a particular  
6      fact or facts of other material facts which are necessary to  
7      a proper understanding of the truth of the matters stated.

8              In other words, once having undertaken to state  
9      a fact or facts, there is an obligation on the one who does  
10     so, not to give such a distorted picture of them as to make  
11     the statement misleading concerning what the actual facts  
12     really are.

13              Sometimes a half-truth is no better than an  
14     outright falsehood, and a fraudulent misrepresentation may be  
15     effected by half-truths calculated to mislead. Having chosen  
16     to speak, there is an obligation to state all the facts which  
17     are necessary to a proper understanding of the particular  
18     subject matter which is being covered.

19              A statement although literally true is nonetheless  
20     false if, when interpreted in the light of the effect it would  
21     produce on the minds of those whom it was calculated to  
22     influence, it would create a false impression of the true state  
23     of affairs.

24              In determining whether a defendant became a  
25     participant, you must determine whether the defendant acted

2      wilfully and knowingly.

3                 The word "knowingly" means that the defendant  
4      acted purposely and deliberately. Similarly, "wilfully" is  
5      used here. It means intentionally, with a bad purpose to do  
6      that which the law forbids. In other words, you must find  
7      that the defendant purposely did the acts with which the  
8      defendant is charged, and did not act carelessly or negligent-  
9      ly or through inadvertent error or mistake or something of  
10     that nature.

11                The question of the defendant's knowledge and his  
12     intent and his wilfulness is a question of fact you must decide  
13     in this case. But, unlike most other questions of fact, it  
14     involves what is in a person's mind or the purpose which  
15     motivates him in a given course of conduct. Obviously, we  
16     have not yet devised, and perhaps it is well that we never did,  
17     an instrument to record what goes on in a person's mind.  
18     Rarely is direct proof available that a person has knowledge  
19     of a particular fact or has a particular purpose in mind when  
20     he or she acts.

21                Thus, direct proof of the knowledge of falsity  
22     and of wilful and wrongful intent is not necessary. Usually  
23     such knowledge or purpose is established by circumstantial  
24     evidence and determined from the acts and conduct and all the  
25     circumstances and the natural inferences that you may draw

2      therefrom.

3                    False statements and misrepresentations may be  
4                    made either by statements which are direct untruths --  
5                    such as to say that something happened when it did not -- or  
6                    by statement of half-truths -- leaving out a part of the  
7                    facts necessary to an understanding of the complete truth.

8                    Remember also that the misrepresentations must be  
9                    material, that is, of such a nature that it would tend to  
10                   influence a person's decision whether to act or not.

11                  If you find that the defendant under consideration  
12                  knowingly and wilfully engaged in a scheme to defraud, you  
13                  must then consider the next element of the offense charged,  
14                  that is, whether the mails were employed, one way or the other,  
15                  in furtherance of the scheme.

16                  The Government alleges that the defendants mailed  
17                  or caused to be mailed credit card applications and charge  
18                  account applications. It is not necessary that the matter  
19                  which was mailed contain in itself anything criminal or  
20                  objectionable or any misrepresentations or disclose a fraudu-  
21                  lent purpose or show that it was in furtherance of the scheme.  
22                  The matter may be wholly innocent in itself. Nor is it  
23                  necessary that the defendant, under consideration, personally  
24                  mailed anything. You need only find that the defendant  
25                  caused the mailing to be made by taking steps which he or she

2      knew at the time might naturally and probably result in  
3      the use of the mails.

4                    I will now instruct you on the elements of the  
5      crime charged in Counts 6 through 9 of the indictment. Those  
6      counts read as follows:

7                    "The Grand Jury further charges:

8                    "On or about the dates hereinafter set forth, in the  
9      Southern District of New York, Isaiah Crutch, also known as  
10     Alexander Jackson, and Anna Jean George, also known as Alice  
11     Holmes, the defendants, unlawfully, wilfully and knowingly,  
12     and for the purpose of conducting, promoting, and carrying on  
13     by means of the Postal Service the aforesaid scheme and  
14     artifice to defraud referred to in Counts 2 through 5, did use  
15     and assume, and request to be addressed by, fictitious, false  
16     and assumed names and names other than their own proper names,  
17     as hereinafter set forth, and did take and receive from the  
18     Postal Service mail matter addressed to such fictitious, false,  
19     and assumed names, to wit:

20                    "Count 6 - Alexander Jackson - Item set forth in  
21                    Count 2" -- which you will recall was  
22                    the Saks Fifth Avenue credit card.

23                    "Count 7 - Alexander Jackson" -- the assumed name -  
24                    "Item set forth in Count 3" -- the  
25                    Diners Club credit card.

2 "Count 8 - Alexander Jackson" -- the assumed  
3 name -- "Item set forth in Count 4" --  
4 which was the Macy's credit card.

5 "Count 9 - Alice Holmes - Item set forth in  
6 Count 5" -- the American Express credit  
7 card.

8 To find the defendants guilty of the crimes  
9 charged in Counts 6 through 9 of the indictment, you must find  
10 beyond a reasonable doubt:

11 1. That the defendant under consideration devised  
12 or intended to devise a scheme or artifice to defraud, or to  
13 obtain money or property by fraudulent pretenses or representa-  
14 tions;

15 2. That the defendant you are considering did  
16 devise or become a party to such a scheme or artifice  
17 knowingly, wilfully, with knowledge of its fraudulent nature  
18 and with intent to defraud.

19 3. That for the purpose of executing the scheme  
20 or artifice he or she requested to be addressed by a  
21 fictitious, false or assumed name, or took and received any  
22 letter or other mail matter addressed to any such fictitious,  
23 false or assumed name.

24 If you find that the defendant used names and  
25 addresses other than defendant's own in order to avoid

2      subsequent identification, that would be a fact from which  
3      you may, but need not, infer a consciousness of guilt on  
4      defendant's part.

5              The counts of the indictment charge that the acts  
6      involved occurred on or about certain dates. It does not  
7      matter if a specific transaction is alleged to have occurred  
8      on or about a certain date and the evidence indicates that  
9      in fact it was on another date. The law only requires a  
10     substantial similarity between the dates alleged in the indict-  
11     ment and the date established by the evidence.

12             It is not necessary for the Government to show  
13     that the defendant you are considering, herself or himself,  
14     physically committed the crimes alleged. Section 2 of Title  
15     18, United States Code, provides that a person who aids and  
16     abets another to commit an offense is just as guilty of that  
17     offense as if she or he committed it herself or himself.  
18     Accordingly, you may find a defendant guilty of the offenses  
19     charged if you find beyond a reasonable doubt that a co-  
20     defendant committed the offense and that the other defendant  
21     aided and abetted him or her.

22             To determine whether a defendant aided and abetted  
23     the commission of an offense, you ask yourselves these  
24     questions: Did she or he associate herself or himself with the  
25     venture? Did she or he participate in it as something she or

2       he wished to bring about? Did she or he seek by her or his  
3       action to make it succeed? If she or he did, then she or  
4       he is an aider and abettor.

5               I will now instruct you on the elements of the  
6       crime of conspiracy, charged in Count 1 of the indictment.  
7       Conspiracy of the type charged here is a crime entirely  
8       separate, distinct and different from the crimes whose  
9       commission may be the object of the conspiracy.

10              What does that mean? To do something may be an  
11       offense. To scheme to do an unlawful thing is also an  
12       offense, even if you don't carry it out, provided that an  
13       overt act has been committed, as I will explain to you.

14              What is a conspiracy? A conspiracy is a combination  
15       or agreement of two or more persons, by concerted action, to  
16       accomplish a criminal or unlawful purpose, or some purpose  
17       not in itself criminal or unlawful, by criminal or unlawful  
18       means.

19              The gist of the crime of conspiracy is the unlawful  
20       combination or agreement to violate the law. Whether or not  
21       the persons charged in the indictment accomplished what it is  
22       alleged they conspired to do is immaterial to the question of  
23       guilt or innocence.

24              In order to prove the crime alleged in the first  
25       count, conspiracy, the Government must establish the following

2      four elements beyond a reasonable doubt:

3              First, the existence of a scheme or plot, as

4      charged in the conspiracy count of the indictment;

5              Second, that it was part of the conspiracy to

6      unlawfully violate the provisions of one or more of the

7      statutes set forth in Count 1 and concerning which I shall

8      tell you more in a moment;

9              Third, that the defendant you are considering

10     knowingly and wilfully became a participant in the conspiracy;

11     and

12     Fourth, that at least one of the co-conspirators

13     knowingly committed at least one of the overt acts -- that

14     means an open act, out front, where everybody can see it -- as

15     set forth in the indictment.

16     If the Government fails to establish each of these

17     elements beyond a reasonable doubt, you must acquit the

18     defendant under consideration. If, on the other hand, it has

19     established each element beyond a reasonable doubt, you must

20     find the defendant guilty of the charge of conspiracy.

21     To establish a conspiracy, the Government is not

22     required to show that two or more persons sat around a table

23     or in a bedroom and entered into a solemn compact, orally or

24     in writing, stating that they have formed a conspiracy to

25     violate the law, setting forth details of the plans, the means

2      by which the unlawful project is to be carried out, or  
3      the part to be played by each conspirator. None of that  
4      byplay need be shown. Indeed, it would be extraordinary if  
5      there was such a formal document or a specific oral agreement.

6              Your common sense will tell you that when persons  
7      in fact undertake to enter into a criminal conspiracy, much  
8      is left to unexpressed understanding. Conspirators do not  
9      usually reduce their agreements to writing or acknowledge  
10     them before a notary public, nor do they publicly broadcast  
11     their plans. By its very nature a conspiracy is almost  
12     invariably secret in its origin and execution.

13             It is sufficient if two or more persons, in any  
14     manner, through any contrivance, impliedly or tacitly, come to  
15     a common understanding to violate the law. Express language  
16     or specific words are not required to indicate assent or  
17     attachment to a conspiracy, nor is it required that you find  
18     that all the co-conspirators alleged in the indictment joined  
19     in the conspiracy in order to find that a conspiracy existed.  
20     You need only find that the defendant entered into an unlawful  
21     agreement with one or more persons in order to find that a  
22     conspiracy existed.

23             In determining whether there has been an unlawful  
24     agreement, you may judge acts and conduct of the alleged  
25     conspirator which are done to carry out an apparent criminal

2      purpose. The adage "Actions speak louder than words" is  
3      applicable here. Usually the only evidence available is  
4      that of disconnected acts which, however, when taken  
5      together in connection with each other, show a conspiracy to  
6      secure a particular result as satisfactorily and conclusively  
7      as more direct proof.

8              Proof concerning the accomplishment of the objects  
9      of a conspiracy may be the most persuasive evidence of the  
10     existence of the conspiracy itself. Success of the venture,  
11     if you believe it was successful, may be the best proof of  
12     the existence of the agreement.

13              In determining whether the conspiracy charged in  
14     this indictment actually existed, you may consider the  
15     evidence of the acts and conduct of the alleged conspirators  
16     as a whole and the reasonable inferences to be drawn from such  
17     evidence.

18              If upon such consideration of the evidence you  
19     find beyond a reasonable doubt that the minds of at least two--  
20     and it takes two to have a conspiracy -- of the alleged  
21     conspirators met in an understanding way and that they agreed  
22     to work together in furtherance of the unlawful scheme alleged  
23     in the indictment, then proof of the existence of a conspiracy,  
24     but only of its existence, is complete.

25              The second element which you must find is that the

2      conspirators' purpose would have violated one or more of the  
3      following laws of the United States, statutory provisions, the  
4      first of which states:

5                "Whoever, having devised or intending to devise  
6                any scheme or artifice to defraud, or for  
7                obtaining money or property by means of false  
8                or fraudulent pretenses, representations, or  
9                promises . . . for the purpose of executing such  
10               scheme or artifice or attempting so to do, places  
11               in any post office or authorized depository for mail  
12               matter, any matter or thing whatever to be sent  
13               or delivered by the Postal Service, or takes or  
14               receives therefrom, any such matter or thing, or  
15               knowingly causes to be delivered by mail accord-  
16               ing to the direction thereon . . . any such matter or  
17               thing. . ." shall be guilty of a crime.

18               The second provision, which would be a purpose  
19               that violated one or more of the laws, states that:

20               "Whoever, for the purpose of conducting, promoting,  
21               or carrying on by means of the Postal Service, any  
22               scheme or device mentioned in section 1341 of this  
23               title or any other unlawful business, uses or  
24               assumes, or requests to be addressed by, any  
25               fictitious, false, or assumed title, name, or

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Charge of the Court

2 address or name other than his own proper name,  
3 or takes or receives from any post office or  
4 authorized depository of mail matter, any letter,  
5 postal card, package, or other mail matter  
6 addressed to any such fictitious, false, or  
7 assumed title, name, or address, or name other  
8 than his own proper name, shall be" . . . guilty  
9 of a crime.

16 It is not required that a person be a member of  
17 the conspiracy from its very start. She or he may join it  
18 at any point during its progress, and be held responsible for  
19 all that has been done before she or he joined, and that may  
20 be done thereafter, during its existence and while she or he  
21 remains a member, that is, so long as she or he is a member  
22 of the conspiracy.

Simply stated, using the partnership analogy, by becoming a partner she or he assumes all the liabilities of the partnership, including those that occurred before she or

1 he became a member. Nor is it required that she or he know  
2 all the members of the conspiracy.

3 It is not necessary that the defendant be fully  
4 informed as to the details of the scope of the conspiracy in  
5 order to justify an inference of knowledge on her or his  
6 part. Omniscience regarding every aspect of the conspiracy  
7 is not indispensable to a finding of knowledge of the illicit  
8 purposes and the nature of the operation of the conspiracy.  
9 Legitimate and reasonable inferences of such knowledge can be  
10 drawn from circumstantial as well as direct evidence, and as  
11 I have explained, it is immaterial whether the defendant whom  
12 you are considering knew the full extent of the conspiracy  
13 and all of its activities and actors.

14 In determining whether the defendant was a member  
15 of the conspiracy, you must determine whether she or he  
16 participated with knowledge of its unlawful purpose.  
17 Knowledge is a matter of inference from the facts proved.  
18 As I said, it is not necessary that one be fully informed as  
19 to the details and scope of the conspiracy, or be acquainted  
20 with all the co-conspirators, in order to justify an inference  
21 of knowledge. The question then is: Did the defendant join  
22 the others with awareness of at least some of the basic  
23 purposes and aims of the conspiracy? If so, then the  
24 defendant adopts as the defendant's own the past and future  
25

2      acts of all the other conspirators.

3               The guilt of a conspirator is not measured by the  
4      extent or the duration of her or his participation. Even if  
5      she or he entered into the conspiracy after it was formed or  
6      if she or he participated in it to a degree more limited  
7      than that of her or his co-conspirators, she or he is equally  
8      culpable so long as she or he was in fact a conspirator.

9               I want to caution you that mere association with  
10     one or more conspirators does not make one a member of a  
11     conspiracy, nor is knowledge of a conspiracy without  
12     participation therein, sufficient to constitute membership.

13        What is necessary is that the defendant participate with  
14     knowledge of at least some of the purposes of the conspiracy  
15     and with intent to aid in the accomplishment of those unlawful  
16     ends.

17        If you find circumstances of intrigue or  
18     deviousness or attempts by the defendants to conceal the true  
19     nature of a transaction, this may be considered as circum-  
20     stantial evidence of knowledge of unlawful purpose, if you so  
21     elect.

22        In determining whether a defendant became a  
23     participant in the conspiracy, you must determine whether she  
24     or he acted knowingly and wilfully. I have previously  
25     explained to you the definition of the terms "knowingly" and

2      "wilfully." You are to apply that definition here in reaching  
3      a decision on the conspiracy count.

4      Now we are almost through.

5      If you find the Government has sustained the  
6      element as to a defendant's participation, we reach the  
7      final      element. I have already mentioned that the fourth  
8      essential element of the crime of conspiracy is that an overt  
9      act intended to effect the object of the conspiracy be commit-  
10     ted by at least one of the co-conspirators after the unlawful  
11     agreement has been made.

12     An overt act is any step, action or conduct which  
13     is taken to achieve, accomplish or further the objective of  
14     the conspiracy. The purpose of requiring proof of an overt  
15     act is that while parties might conspire and agree to violate  
16     the law, yet they may change their minds and do nothing to  
17     carry it into effect, in which event it will not constitute  
18     an offense. The law is not aimed at thought control. It is  
19     aimed at control of thought which is then carried out by some  
20     overt act. The overt act need not be a criminal act, nor  
21     need it be the very crime which is the object of the conspiracy.  
22     It may be a lawful act.

23     As an example, let us look at Overt Act No. 1,  
24     which states that on or about the 25th day of February, 1974,  
25     defendant Crutch mailed a Master Charge credit card

2      application to First National City Bank. By itself this may  
3      well be innocent conduct. But if, as the Government contends,  
4      the defendant Crutch mailed said credit card application to  
5      First National City Bank for the purpose of and in furtherance  
6      of a step in the scheme to defraud, then that act sheds its  
7      innocent appearance. It is an overt act by an alleged co-  
8      conspirator in furtherance of the conspiracy.

9               It is not necessary for the Government to prove  
10     that each member of the conspiracy committed or participated  
11     in the particular overt act.

12               Also, the Government is not required to prove each  
13     of the overt acts as alleged in the indictment. It is  
14     sufficient if it proves the commission of at least one of the  
15     acts in the Southern District of New York, which includes the  
16     City of New York, at or about the time alleged, although in  
17     this case the Government claims it has proved each act set  
18     forth in the indictment.

19               The overt act need not have occurred at the  
20     precise time or place as alleged. So, too, while the indict-  
21     ment charges that the conspiracy began on or about January 1,  
22     1973, and continued thereafter to the date of the filing on  
23     October 21, 1974, it is not essential that the Government  
24     prove the conspiracy started and ended on or about those  
25     particular dates. It is sufficient if you find that in fact

2      a conspiracy was formed and existed for some substantial time  
3      within the period set forth in the indictment and that at  
4      least one of the overt acts was committed in furtherance of  
5      its objectives within that period.

6              With these general principles as a guide, you will  
7      consider whether the Government has, by the required degree  
8      of proof, established the essential elements of the conspiracy.

9              The overt acts charged in this indictment read as  
10     follows:

11              "1. On or about the 25th day of February, 1974,  
12      Isaiah Crutch mailed a Master Charge credit card application  
13      to, and obtained by mail a Master Charge credit card from,  
14      First National City Bank, using the name Alexander Jackson,  
15      and listing as his employer 'Data Computer Marketing Profile.'

16              "2. On or about the 30th day of May, 1974, Isaiah  
17      Crutch attempted to make a purchase at Gimbels with a Gimbels  
18      credit card issued to Shawn C. Roberts.

19              "3. On or about the 27th day of January, 1974,  
20      Anna Jean George mailed a credit card application to, and  
21      obtained by mail a credit card from, Gimbels, using the  
22      name Alice Holmes, and listing as her employer 'Data Computer  
23      Profile.'"

24              So much for the conspiracy count.

25              The substantive counts are those counts that I

2      described before, from 2 to 9, having to do with the mailing  
3      and the use of fictitious names.

4                There is an alternative basis upon which you may  
5      find the defendant guilty on each of those substantive counts,  
6      even if you are not satisfied that, as to the particular  
7      defendant you are considering, each of the elements I have  
8      previously described has been proved beyond a reasonable  
9      doubt.

10              This alternative basis is as follows: If you find  
11      beyond a reasonable doubt that the defendant whom you are  
12      considering was a co-conspirator, a schemer or plotter, and  
13      that the substantive offenses alleged in those counts were  
14      committed by one or more members of the alleged conspiracy in  
15      the course thereof, and that the acts which constituted the  
16      substantive offenses were done in furtherance of a portion  
17      of that conspiracy of which the defendant in question was a  
18      member, and that the defendant might reasonably have foreseen  
19      that those acts would be done, then you may find that the  
20      defendant whom you are considering is guilty of the substantive  
21      offenses in which she or he is named, even though she or he  
22      did not otherwise personally participate in the acts  
23      constituting those offenses or did not have knowledge of them.  
24      The reason for this is that, having become a partner in crime,  
25      a co-conspirator committing the substantive crime would in

2        that case be an agent of the other members of the conspiracy  
3        or partnership.

4                Finally, if you should find that the law has not  
5        been violated, you should not hesitate to return a verdict  
6        of not guilty. On the other hand, if you should find that the  
7        law has been violated as charged, you should not hesitate to  
8        render a verdict of guilty.

9                The most important part of this case is the part  
10      which you now as jurors are about to perform, citizens in a  
11      federal court, because it is for you and you alone to decide  
12      whether the defendant is guilty or not guilty of the crimes  
13      charged. I know you will decide the issues that have been  
14      presented to you according to the oath -- you will recall the  
15      oath that you took as jurors when you were sworn in -- in  
16      which you promised with upraised hands, as you recall, that  
17      you would well and truly try the issues joined in this case  
18      and a true verdict render, so help you God.

19               I suggest that if you follow that oath and  
20      decide the issues without combining your thinking with any  
21      emotions, you will arrive at a just verdict. It must be clear  
22      to you that once you get into an emotional state and let fear  
23      or prejudice or bias or sympathy interfere with your thinking,  
24      then you don't arrive at a true and just verdict.

25               If in your deliberations the question of guilt is

2      determined, please do not discuss the question of possible  
3      punishment. That is a matter that rests on my conscience  
4      and my conscience alone. The judge and the judge alone is the  
5      one that has the obligation of imposing sentence. If you do  
6      discuss it amongst yourselves, then you are encroaching on  
7      my job, and I ask you not to do it. Your job is to consider  
8      and determine the facts, and my job is to pass upon the law  
9      and, in the event of conviction, to impose sentence.

10     Each juror is entitled to his or her opinion.

11     Each should, however, exchange views with fellow jurors.  
12     That is the very purpose of jury deliberations: to discuss  
13     and consider the evidence, to listen to the arguments of  
14     fellow jurors, and to present your individual views, to  
15     consult with one another and to reach an agreement based  
16     solely and wholly on the evidence.

17     Each one must decide the case for himself or  
18     herself after consideration with your fellow jurors of the  
19     evidence in the case, but you should not hesitate to change  
20     an opinion which, after discussion with your fellow jurors,  
21     appears erroneous in the light of the discussion viewed  
22     against the evidence and the law.

23     If, after carefully considering all the evidence  
24     and arguments of your fellow jurors, you entertain a  
25     conscientious view that differs from others, you are not to

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## Charge of the Court

2       yield your convictions simply because you are outnumbered or  
3       outweighed.

4               Your final vote on each count must be unanimous  
5       and must reflect your conscientious conviction as to how the  
6       issues should be decided.

7               As I have already said, you are required to  
8       render separately a verdict as to each defendant on each  
9       separate count.

10              Mr. Hall, your foreman, will receive a copy of  
11       the indictment, so that you will have it before you and have  
12       the numbers of the several counts available as you consider  
13       them.

14              You will therefore report through your foreman,  
15       if you have unanimously agreed as to a count, a verdict of  
16       guilty or not guilty with respect to that count.

17              If in the course of your deliberations you require  
18       any exhibits or wish to hear any testimony, you may send out  
19       a note, which will be signed by your foreman, Mr. Hall--he  
20       will be provided with paper and pencil for that purpose--and  
21       they will be sent to you or given to you or the testimony will  
22       be read, whatever the case may be.

23              Please do not communicate with anyone the results  
24       of your deliberations, not even me, until you have reached a  
25       verdict on a count.

2                    Now, if you will bear with me for just a moment,  
3      relax in the jurybox, I will take a moment to talk to the  
4      lawyers, so that they can call to my attention anything that  
5      I may have overlooked or on which I may have misspoken.

6                    Gentlemen, will you come up.

7                    (At the side bar)

8                    MR. LAIFER: First, there was one very minor  
9      thing. When you were discussing Count 3, you said an April  
10     date. It is minor, but I think it is something that should  
11     be corrected. You said April something, and it should have  
12     been May something.

13                  THE COURT: May 3.

14                  MR. LAIFER: You said April.

15                  THE COURT: I will correct that.

16                  MR. LAIFER: Also, your Honor, as to our Request  
17     No. 4, I do not believe your Honor charged our Request No. 4.

18                  THE COURT: I think that that is already included  
19     in the charge, but I have no difficulty in giving it in the  
20     language that you have requested and will do so.

21                  MR. LAIFER: Thank you, sir.

22                  Also, your Honor included a portion of our Request  
23     No. 5, but I do not believe your Honor went to that portion  
24     under Turrell, where it states mere knowledge is insufficient.

25                  THE COURT: Oh, yes. That was part of the charge.

2 MR. LAIFER: Did you say that, sir?

3 THE COURT: Yes.

4 MR. LAIFER: I may have missed it.

5 THE COURT: Are there any exceptions or requests?

6 MR. LAIFER: Oh, yes, one further thing, sir.

7 On behalf of my client I would object to a copy  
8 of the indictment being given to the jurors.

9 THE COURT: All right.

10 MR. LAIFER: On the grounds it is not evidence.

11 MR. EISENBERG: I would too. I would join in that  
12 objection.

13 THE COURT: Are there any exceptions or requests  
14 on the part of the defendant Crutch?

15 MR. EISENBERG: Yes, Judge. I would first object  
16 to that part of the charge which in effect told the jury to  
17 disregard any doubt based upon ingenuity of counsel not being  
18 a reasonable doubt.

19 THE COURT: I stated there something that you have  
20 not just stated now: unless justified by the evidence or want  
21 of it. That is a standard charge of mine.

22 MR. EISENBERG: Maybe I can't write that fast.

23 I also take exception to the part of the charge  
24 which your Honor gave which referred to one of the overt acts  
25 in the indictment, specifically Overt Act No. 1, and further

2 I would except to that part of the charge where in that  
3 place you said that that overt act committed by Crutch, the  
4 mailing of the First National City Bank application, would  
5 be or --

6 THE COURT: I read the overt act just as it appears  
7 in the indictment. There it is down at the bottom of the  
8 page.

9 MR. EISENBERG: I don't know if you read it just  
10 as appears.

11 THE COURT: I read it exactly. I read it from  
12 the indictment.

13 MR. EISENBERG: Yes, but then you added at the  
14 end, Judge, to give the impression in mind that the mailing  
15 would be in furtherance of the scheme or the act to defraud.

16 THE COURT: I did not add anything to the end of the  
17 overt act. I read it as it appeared in the indictment.

18 MR. EISENBERG: No, I am saying that your Honor  
19 read the overt act.

20 THE COURT: Yes?

21 MR. EISENBERG: Your Honor then explained it,  
22 saying that an innocent act could by itself nevertheless still  
23 be an overt act.

24 THE COURT: It it is a step in the conspiracy.

25 MR. EISENBERG: That is right. And then your Honor

2      went on to explain that the mailing of this particular  
3      application by Mr. Crutch was in furtherance of the scheme  
4      or artifice or conspiracy.

5                    THE COURT: No, I did not direct a verdict at  
6      any stage of the case.

7                    Anything else?

8                    MR. EISENBERG: That is all.

9                    MR. LAIFER: I have no further.

10                   THE COURT: Has the Government any exceptions or  
11      requests?

12                   MS. STRAUSS: Your Honor, with respect to the  
13      Government's contention on the mailing, there was an error in  
14      our request to charge which was then reflected in your Honor's  
15      charge: that the Government contends that credit card  
16      applications were mailed. It should have read credit cards  
17      were mailed. I believe the contention has now been misstated  
18      to the jury. The indictment reads credit cards.

19                   THE COURT: Which count is this?

20                   MS. STRAUSS: On the mail fraud counts, your  
21      Honor, the use of mails. This is not correct. It should read  
22      credit cards.

23                   THE COURT: All right.

24                   MS. STRAUSS: And the Government would also con-  
25      tend that at the very least, if the jury wants to look at the

2      indictment, they should be entitled to do so.

3                    THE COURT: There is no question about that.

4                    (In open court)

5                    THE COURT: As frequently happens, small mistakes  
6      creep in.

7                    I told you, in connection with the use of the  
8      mails, that the Government alleges that the defendants mailed  
9      or caused to be mailed credit card applications and charge  
10     account applications. I wish to correct that. That is not  
11     what they contend. They contend that the defendants mailed  
12     or caused to be mailed credit cards. That was one correction.

13                  I also charge you that mere similarity of conduct  
14     among the alleged co-conspirators or the fact that they may  
15     have been associated with each other or that two or more of  
16     them may have discussed together common aims and interests  
17     does not by itself establish that there was a conspiracy.  
18     What establishes a conspiracy is as I have charged you in  
19     my main charge.

20                  Finally, in mentioning Count 3 of the indictment,  
21     I misspoke on the date. Count 3 speaks of the Diners Club  
22     credit card having been mailed, not as I said it to you -- I  
23     suppose if I give you the wrong date, then that will impress  
24     itself on your mind -- I said April 3; it is written here  
25     May 3. I mean to say May 3, 1974, is when the Diners Club credit

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2       card was mailed.

3                   That concludes the matters involved. I will,  
4       Mr. Hall, hold the indictment, unless and until you send for  
5       it if you want it. In other words, I am not going to volunteer  
6       what you should want. You and your jurors decide what you  
7       want, then send out to me a note, anything that you think you  
8       want from the evidence, including a copy of the indictment.

9                   Is the marshal here? He may be sworn.

10                  First, before the marshal is sworn, Mr. DeSoro  
11       and Mr. Lightner, you are alternates in this case, and happily  
12       all of the twelve jurors are present and accounted for and  
13       able to perform their duties, and I now excuse you with the  
14       thanks of the Court from further service. You are to report  
15       to Room 109 on Monday for any further service that may be  
16       required of you. Thank you.

17                  (The two alternate jurors left the courtroom.)

18                  THE COURT: Will you swear the marshal, please.

19                  (The marshal was sworn.)

20                  THE COURT: Mr. Hall, you may take your jurors out  
21       and deliberate.

22                  (At 3:53 p.m., the jury retired to deliberate upon  
23       a verdict.)

24                  MR. LAIFER: Your Honor, may I please be excused to  
25       get my car keys?

2 THE COURT: During the period of your absence,  
3 which I take it will only be fifteen or twenty minutes or so --

4 MR. LAIFER: Less, your Honor.

5 THE COURT: -- do you designate to handle any  
6 requests from the jury Mr. Eisenberg?

7 MR. LAIFER: Yes, your Honor.

8 THE COURT: Is that with the consent of your client?

9 MR. LAIFER: Yes. I spoke to her about it. She  
10 just went to the ladies' room. She so consents.

11 THE COURT: She consents. All right. Please come  
12 back as soon as you can.

13 MR. LAIFER: I will be back within ten minutes.

14 (Recess)

15 (At 4:35 p.m., jury not present:)

16 THE COURT: The jury has requested the following  
17 documents. Will you please get them available.

18                           1. The report of the handwriting expert. What  
19                           exhibit number is that?

20 MR. LAIFER: That is the Court's Exhibit 4, your  
21 Honor.

22 THE COURT: 2. A. The bank pictures of Crutch.

22 MS. STRAUSS: Yes, that would be the Master Charge.

THE COURT: Is that Exhibit 12?

MS. STRAUSS: No, your Honor. That is 11 --

2 THE COURT: Off the record.

3 (Discussion off the record)

4 THE COURT: I am sending to the jury, in response  
5 to its request, the following exhibits: Court's Exhibit 4,  
6 Government Exhibit 11-Q and -R, Government Exhibit 2-F,  
7 Government's Exhibits 14A, 15A, 16A, 17A, 18A, 19A, 20A, 21A,  
8 22A, 34A, Government Exhibits 8A, 8B, 49 and 50.

9 I think you had better give me those two that were  
10 put in, that the jury had before, Exhibits 51A and 52A.

11 MR. LAIFER: Oh, the little photostats. Yes, your  
12 Honor.

13 THE COURT: Yes. And they also requested copy of  
14 the indictment. Please examine this copy and see whether this  
15 is a clean copy.

16 MR. EISENBERG: It is OK, Judge.

17 THE COURT: All right. Give these to the marshal,  
18 please.

19 The note from the jury referred to will be marked  
20 Court's Exhibit 6.

21 (Court's Exhibit 6 marked.)

22 MS. STRAUSS: The Government turned over, pursuant  
23 to 18 USC section 3500, the following exhibits prior to the  
24 cross-examination of the following witnesses:

25 With respect to Darrell O'Connor, 3571, which is a

2 one-page document; 3573, running from pages 66 through 81.

3 With respect to Postal Inspector Wayne Meyers,  
4 3513, one-page document; 3514, running from pages 106 through  
5 120; 3515, a one-page document; 3516, consisting of three  
6 pages; 3520, which is one page.

7 With respect to Postal Inspector Macho, 3520, one-  
8 page document; 3521, a two-page document; 3522, one-page  
9 document; 3523, a two-page document; and 3524, running from  
10 pages 120 through 128.

11 With respect to Agent Dale Hackbart, 3502,  
12 consisting of pages 9 through 20; 3503, a one-page document;  
13 3504, one-page document; 3505, a one-page document; 3506, a  
14 one-page document; 3507, a one-page document; 3508, a one-page  
15 document; 3509, running from pages 1 through 13; 3510, running  
16 from pages 86 through 106.

17 With respect to John Murray, the government turned  
18 over 35223, a seven-page document; 35222, a four-page  
19 document; 35220, a five-page document; document which was not  
20 given a number, consisting of the work notes of the witness,  
21 which runs for four pages; further document not given a  
22 number, also consisting of the work notes of the witness; and  
23 35221, three-page report.

24 (Recess)

25 (At 5:50 p.m., jury roll called - all present.)

2      THE CLERK: Mr. Foreman, has the jury agreed upon  
3      a verdict?

4      THE FOREMAN: Yes, they have.

5      THE CLERK: How do you find as to defendant Isaiah  
6      Crutch on Count 1?

7      THE FOREMAN: We, the jury, find Isaiah Crutch  
8      guilty.

9      THE COURT: Count 2.

10     THE CLERK: On Count 1, guilty. On Count 2?

11     THE FOREMAN: Guilty also.

12     THE CLERK: On Count 3?

13     THE FOREMAN: Guilty.

14     THE CLERK: On Count 4?

15     THE FOREMAN: Guilty.

16     THE CLERK: On Count 5?

17     THE FOREMAN: Guilty.

18     THE CLERK: On Count 6?

19     THE FOREMAN: Guilty.

20     THE CLERK: Count 7?

21     THE FOREMAN: Guilty.

22     THE CLERK: Count 8?

23     THE FOREMAN: Guilty.

24     THE CLERK: Count 9?

25     THE FOREMAN: Guilty.

2 How do you find as to the defendant Anna Jean  
3 George on Count 1?

4 THE FOREMAN: Guilty.

5 THE CLERK: On Count 2?

6 THE FOREMAN: Guilty.

7 THE CLERK: Count 3?

8 THE FOREMAN: Guilty.

9 THE CLERK: Count 4?

10 THE FOREMAN: Guilty.

11 THE CLERK: Count 5?

12 THE FOREMAN: Guilty.

13 THE CLERK: Count 6?

14 THE FOREMAN: Guilty.

15 THE CLERK: Count 7?

16 THE FOREMAN: Guilty.

17 THE CLERK: Count 8?

18 THE FOREMAN: Guilty.

19 THE CLERK: Count 9?

20 THE FOREMAN: Guilty.

21 THE CLERK: Ladies and gentlemen, listen to your  
22 verdict as it stands recorded. You say you find the defendant  
23 Isaiah Crutch guilty on all counts, and Anna Jean George  
24 guilty on all counts.

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*Schulman*

STATE OF NEW YORK )  
: SS.  
COUNTY OF NEW YORK )

ROBERT BAILEY, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 24 day of May 1975 deponent served the within Appendix upon:

*Attala*  
Se. Dist. At. Atty.

attorney(s) for *Appellee*

in this action, at

*MS Courthouse  
Foley Sq  
N.Y.C.*

the address(es) designated by said attorney(s) for that purpose by depositing 3 true copies of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.

*[Signature]*  
Robert Bailey

Sworn to before me, this 24 day of May, 1975

*William Bailey*  
WILLIAM BAILEY  
Notary Public, State of New York  
No. 43-0132945  
Qualified in Richmond County  
Commission Expires March 30, 1976